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Letter dated 27 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 November 2003 (S/2003/1065). The Counter-Terrorism Committee has received the attached fourth report from South Africa submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 27 February 2004 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Representative of the Republic of South Africa to the United Nations presents his compliments to the Chairperson of the Committee established pursuant to Security Council resolution 1373 (2001) and has the honour to respond to the points raised in the latter's letter dated 22 October 2003. The enclosure attached herewith constitutes the fourth report of the Government of South Africa on the steps taken to implement resolution 1373 (2001) (see enclosure).

Enclosure*

SOUTH AFRICA'S REPLY TO THE LETTER DATED 22 OCTOBER 2003 RECEIVED FROM THE CHAIRPERSON OF THE SECURITY COUNCIL'S COUNTER-TERRORISM COMMITTEE, AMBASSADOR I.F. ARIAS, CONTAINING COMMENTS ON SOUTH AFRICA'S NATIONAL REPORT (S/2003/272) SUBMITTED PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1373 (2001)

1. IMPLEMENTATION MEASURES

1.1 The CTC would be grateful for a report on the implementation in domestic law of the relevant conventions and protocols relating to terrorism to which South Africa has already become a party, as well as on the prospects of South Africa's joining the relevant conventions and protocols relating to terrorism to which South Africa has yet to become a party. In addition, could South Africa provide the CTC with information concerning the penalties prescribed for the offences created in accordance with the requirements of the said international instruments.

Implementation in domestic law of relevant conventions and protocols relating to terrorism

The Anti-Terrorism Bill is intended to provide the legislative mechanism to implement all the counter-terrorism conventions. The Anti-Terrorism Bill, the title of which was changed during the parliamentary debates to the "Protection of Constitutional Democracy against Terrorist and Related Activities Bill" (POCDATARA), has not yet been finalised. No details can be given on the nature of the offences and the penalties, as amendments to the penalties are not ruled out at this stage. In general, it can be reported that the Bill takes into account the obligation to reflect the severity of the offences involved and the Bill presently provides for a range of sentences, inter alia, imprisonment for life and, in instances where the legislature considers appropriate, for fines to a maximum of R100 million.

The National Assembly of the South African Parliament passed the Bill on Thursday, 20 November 2003. The National Council of Provinces, being the Second House of Parliament, will consider the Bill early in 2004.

In addition to the POCDATARA there is separate legislation to implement the counter-terrorism conventions, such as the Civil Aviation Offences Act, 1972 (Act No.10 of 1972), the Civil Aviation Safety Regulations of 1981 and the Nuclear Energy Act, 1999 (Act No.46 of 1999). (Please see South Africa's National Reports S/2001/1281 and S/2002/792).

The Civil Aviation Authority, for example, has engaged in an extensive review of Aviation Security regulations, which included the drafting of amendments to the Safety (Security) Regulations and the Civil Aviation Offences Act in order to align with the standards and recommended practices of the Annex 17 (Aviation Security) to the Chicago Convention. The regulatory amendments will be forwarded to the Minister of Transport for approval in 2004, and the amendments to the Offences Act

* Annexes are on file with the Secretariat and are available for consultation.

will have to be forwarded to Parliament for approval.

In response to the question of penalties, violations of the provisions of the Nuclear Energy Act, which currently governs nuclear material carries a maximum prison sentence of 10 years for illegal possession of nuclear material. Acts of Terrorism arising from such possession are dealt with in terms of existing legislation.

United Nations Counter-Terrorism Conventions

South Africa has ratified or acceded to nine of the twelve United Nations Counter-Terrorism Conventions and is in the process of acceding to or ratifying the remaining three conventions, namely:

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988 (33 State Parties); entered into force 1 March 1992.

- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Sheif, done at Rome on 10 March 1988 (31 State Parties); entered into force 1 March 1992.

- Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 26 October 1979 (55 State Parties) (South Africa has signed this Convention on 18 May 1981); entered into force 8 February 1987.

A. Effectiveness in the protection of the financial system

1.2	Sub-paragraph 1 (a) requires States to prevent and suppress the financing of terrorist acts. The CTC is pleased to note the role played by South Africa in developing the Kimberley Process with a view to suppressing the trade in conflict diamonds. In that regard, could South Africa provide the CTC with an update on the implementation of the Kimberley process and its effect on the financing of terrorism?

The Kimberley Process

The primary purpose of the Kimberley Process Certification Scheme (KPCS) is to prevent conflict diamonds from being sold on the legitimate diamond market. It is not specifically designed to counter terrorism, although it has the effect of helping to prevent terrorist use of diamonds as a source of finance.

Update on the Implementation of the Kimberley Process

During the tenure of South Africa as the Chair of the Kimberley Process Certification Scheme (KPCS), international implementation has continued to be guided by the objectives on which it was founded, namely:

(a) To stem the flow of rough diamonds used by rebels to finance armed conflict aimed at overthrowing legitimate governments, thereby making a substantial contribution to international peace and security; and

(b) To protect the legitimate diamond trade, upon which many countries are dependent for their economic and social development.

The KPCS seeks to achieve the above through the creation and implementation of an international certification scheme for rough diamonds, based primarily on national certification schemes and on internationally agreed minimum standards.

Over the last year, significant progress has been achieved in the implementation of the KPCS:

- The simultaneous international implementation of the KPCS started on 1 January 2003. In recognition of implementation challenges being faced by certain countries, a "tolerance period" for national implementation of the KPCS was extended to 31 May 2003.

- On 15 May 2003 the World Trade Organisation's General Council approved that a waiver be granted to those countries implementing the KPCS and indicating that they required such a waiver.

- A Review Mission visited the Central African Republic from 8 to 15 June 2003, and reported that they were satisfied with that country's ability and capacity to implement the KPCS, while, at the same time, offering constructive suggestions for the strengthening of internal monitoring and controls.

- The various Working Groups of the KPCS have functioned effectively and are helping to strengthen the implementation of the Scheme. In particular, a recommendation was adopted that provides for the establishment of a peer review mechanism for monitoring implementation of the Scheme. Based on a combination of self-reporting and the use of 'review visits' and 'review missions' to Participants, this peer review mechanism will help guarantee that the provisions of the KPCS are effectively implemented by all Participants.

- The further widening of participation in the KPCS and the overall strengthening of the Scheme was encouraged and facilitated. Several administrative and implementation issues were successfully addressed during 2003. Participation in the KPCS has increased significantly.

South Africa has been chairing the KPCS since its inception in May 2000. The Chair passed to Canada on 1 January 2004 for one year, after which it will pass to the Russian Federation, the 2004 Vice Chair, for the 2005 calendar year.

A Participation Committee was established to examine the documentation provided by Participants in order to determine whether they meet the minimum standards of the Kimberley Process. The following States and Regional Economic Integration Organisations were certified on 31 October 2003 as Participants in the KPCS, having satisfied the minimum requirements of the Scheme: Angola, Armenia, Australia, Belarus, Botswana, Brazil, Bulgaria, Canada, Central African Republic, China, People's Republic of, Congo, Democratic Republic of, Congo, Republic of, Côte D' Ivoire, Croatia, European Community, Guinea, Guyana, Hungary, India,

Israel, Japan, Korea, Republic of, Laos, People's Republic of, Lebanon, Lesotho, Malaysia, Mauritius, Namibia, Poland, Romania, Russian Federation, Sierra Leone, Slovenia, South Africa, Sri Lanka, Switzerland, Tanzania, Thailand, Togo, Ukraine, United Arab Emirates, United States of America, Venezuela, Vietnam, Zimbabwe.

In addition, the rough diamond trading entity known as Chinese Taipei was also assessed to have met the minimum requirements of the KPCS and began implementing the Scheme with effect from 10 May 2003, within the context of ongoing consultations regarding the definitions of a Participant and an Observer.

Several other States have submitted notices of intent to become Participants in the KPCS in the near future and are in the process of submitting the relevant documentation to the Participation Committee.

The organised diamond industry represented by the World Diamond Council, and civil society organisations remain actively involved in the KPCS and attended Plenary meetings as Observers.

As the Chair, South Africa hosted two successful Plenary meetings of the KPCS since the adoption of Resolution 57/302 (2003):

- In Johannesburg, South Africa, from 28 to 30 April 2003; and
- In Sun City, South Africa, from 29 to 31 October 2003.

The Kimberley Process continues to enjoy widespread, growing support and now represents all major diamond producing, trading and processing countries. Ongoing support for the KPCS also helps to promote the legitimate diamond trade, upon which a significant number of countries are dependent for their economic and social development.

The Kimberley Process required revised import and export procedures for Diamonds, which incorporate the responsibilities imposed by the "Kimberley Process Certification Scheme". South African Customs accordingly adopted a policy and procedure regarding the import and export procedures for diamonds. The Certification Scheme involves the issuance of a forgery resistant document that identifies a consignment of unpolished diamonds as being in compliance with the requirements of the Kimberley Process Certification Scheme, and which in relation to export, is issued and validated by the South African Diamond Board and in relation to import is issued and validated by the exporting authority of a participant[1] to the process. The Kimberley Process Certification Scheme is only applicable to unpolished diamonds and the provisions of the scheme apply only to these diamonds and not to finished diamonds. Finished/Polished diamonds are to be dealt with as normal imports.

[1] List of Participants: Angola, Australia, Belgium, Botswana, Brazil, Burkina Faso, Canada, the People's Republic of China, the Democratic Republic of Congo, Cyprus, Czech Republic, Denmark, European Community, France, Gabon, Germany, Ghana, Guinea, India, Israel, Italy, Ivory Coast, Japan, Korea, Lesotho, Liberia, Mauritius, Mexico, Namibia, the Netherlands, Norway, Philippines, Portugal, Russian Federation, Sierra Leone, South Africa, Swaziland, Sweden, Switzerland, United Republic of Tanzania, Thailand, Ukraine, United Arab Emirates, United Kingdom, United States of America, Zimbabwe.

With regard to the import process, when checking the bill of entry the assessment officer needs to verify whether the import of the unpolished diamonds is from a Participant. The certificate must be compared with the "specimen" in the office and any discrepancy must be referred to the Diamond Board while the consignment will be detained. Where finished diamonds are imported and Customs suspects that the value may have been wrongly declared in terms of the commercial invoice presented, Customs will call for additional information such as the proof of payment and contract of sale. Customs may have an independent valuation done at the expense of the importer.

Diamonds imported on a temporary basis require a provisional payment equal to 25% of the VAT (Value Added Tax) pending proof of export.

If a Kimberley certificate is not produced or the importer of unpolished diamonds is not licensed with the Diamond Board, the matter is referred to the Gold and Diamond branch of the South African Police Service. In terms of the Diamond Act, 1986 (Act No. 56 of 1986), no person is allowed to be in possession of unpolished diamonds unless licensed to do so.

Passengers importing any type of diamonds must produce a commercial clearance unless the value as evidenced by the invoices or Kimberley certificate indicates that it falls within rebate allowances. Unpolished diamonds imported from non-participants or without the Kimberley Process Certificate will be detained and the matter referred to the Gold and Diamond branch of the South African Police Service. Where passengers import finished/polished diamonds without any documentation such as the invoices, the diamonds will be detained. Customs may have an independent valuation done at the expense of the importer.

1.3 As regards sub-paragraph 1 (a), under the provisions of Regulations 3 (1) (d) and Regulation 10 (1) c of the Exchange Control Regulations (see page 9 of the third report), South Africa has rendered alternative payment systems such as "hawala" illegal. The CTC would be pleased to know what measures South Africa intends taking in order to ensure alternative payment systems are no longer functioning within its borders as a means of financing terrorism?

South Africa has an Exchange Control regime in place. Currency exchange and electronic monetary transfers are only permitted through Authorised Dealers. These Authorised Dealers are appointed by the Minister of Finance and regulated by the Exchange Control Department at the South African Reserve Bank.

There are 31 banks that are licensed as Authorised Dealers, 2 institutions have limited authority to conduct solely travel-related currency exchange and 5 institutions are permitted to operate as bureaux de change. All foreign exchange transactions must be reported to the Exchange Control Department through the Cross-Border Reporting System.

The Exchange Control Department has the power to investigate any alleged contravention of the Exchange Control Regulations, including hawala's. Thus the Exchange Control has a dedicated Investigations Division within the Exchange Control Department. This Investigations Division employs 12 specialists, who rigorously investigate and prosecute contraventions of Exchange Control regulations. The Exchange Control Investigations Division has extensive ties with other Governmental Departments that have resulted in numerous convictions for contraventions of Exchange Control Regulations.

The Exchange Control Department issues Exchange Control Circulars that give effect to UN decisions and sanctions. All Authorised Dealers through the circulars are notified to not make funds or economic resources available to individuals or entities listed by the UN Security Council resolutions. (See pages 7-8 of Report S/2001/1281). Under Exchange Control Regulation 4, the Exchange Control Department may seize or block any contraventions in terms of the cross border transfers.

1.4	With a view to effectively implementing sub-paragraph 1 (a), has South Africa developed any special strategy or investigative tools, other than those already referred to in previous reports, to enable agencies such as the Police, Customs, the Anti-Money Laundering Department and the Central Bank effectively to prevent resources from being transferred to terrorists? (For example, tools to detect the following types of money laundering: trade based, real estate based, over and under invoicing of imports and exports, alternative remittance systems, such as "hawala", etc.)

South Africa has been developing and implementing policies and measures to combat money laundering for a number of years. South Africa has had legislation with measures to criminalise and combat money laundering, including an obligation to report suspicious transactions, since 1996.

South Africa has established new investigating and prosecuting units such as the Directorate for Special Operations ("the Scorpions") and the Asset Forfeiture Unit to combat organised crime and money laundering and to deal with the proceeds of crime.

In 2002 South Africa enacted legislation (the Financial Intelligence Centre Act, 2001) expanding on these measures by requiring a very wide range of institutions to implement "know your customer" regimes and enhancing the reporting obligations. In addition, this legislation established the Financial Intelligence Centre to receive and analyse the reported information. In February 2003 the Financial Intelligence Centre started functioning in an operational capacity.

Customs and the South African Reserve Bank have developed an electronic-based information system in relation to controls regarding imports and exports. Through this, information provided in relation to exports and imports to both institutions – as a result of revenue and exchange control perspectives, respectively – is able to be shared and compared, facilitating control in general and making abuse, such as over and under invoicing of imports and exports, including by those supporting terrorists – more likely to be detected. The "DA 550 FORM" includes an Export Control Number, which is a Unique Consignment Reference ("UCR") number that each exporter is required to generate per consignment. The UCR number will be used to control the receipt of export proceeds. This is a mandatory field that will indicate the calendar year in which the exports took place, the SWIFT country code of the country from where the exports originated and the customs client number as allocated to the exporter by the South African Revenue Service (SARS). It will also reflect the unique reference number of the document generated by the company that will link the export proceeds to the export consignment. The form also requires the value of the full foreign currency proceeds paid, or payable by the purchaser to the exporter. The exporter must also provide the number of days between the date of shipment and the anticipated date for the receipt of outstanding payments.

It must also be pointed out that all the investigative techniques available to investigating authorities, such as covert operations, the use of informants, interception and monitoring of

communication, controlled delivery etc. are available to detect and investigate money laundering.

South Africa is currently in the process of passing legislation (the POCDATARA Bill – see paragraph 1.1) which will criminalise the financing of terrorism on an extensive basis, including activities to launder property destined to finance terrorism. The enactment of this legislation will widen the scope of the above-mentioned measures aimed at combating money laundering so as to make them more directly applicable to terrorist financing offences. In particular the investigative techniques referred to above will also be applicable to the terrorist financing offences, including the laundering of property involved in terrorist financing. This legislation will further enhance the reporting duties of financial and other institutions to include reports of suspected terrorist financing. It will also expand the functions of the Financial Intelligence Centre to include the analysis of such reports. Finally, the legislation will expand the scope of South Africa's asset forfeiture legislation so as to allow the freezing and forfeiture of property involved in terrorist financing.

1.5 The CTC would be grateful if South Africa could supply it with information relating to the matters, set out immediately below, for the period 1 January 2001 up to the present:

a) The number of arrests of terrorists or their supporters;

b) The value of funds and assets frozen in relation to individuals and entities identified as terrorists or terrorist organizations;

c) Examples of successful investigations/prosecutions relating to terrorism and the financing of terrorism which could be made public.

South Africa has informed the CTC in previous reports that, pending the adoption of the POCDATARA, the only legislation in South Africa that refers specifically to terrorism is section 54 of the Internal Security Act (Act No.74 of 1982). In this context terrorism is defined with reference only to terrorist attacks on South Africa and on the constitutional order.

Section 54 of the Internal Security Act provides that:

QUOTE

(1) Any person who with intent to-

(a) overthrow or endanger the State authority in the Republic;
(b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic;
(c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint; or

in the Republic or elsewhere-

(i) commits an act of violence or threatens or attempts to do so;

(ii) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;
(iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or
(iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason.

(3) Any person who with intent to-

(a) endanger the safety, health or interests of the public at any place in the Republic;
(b) destroy, pollute or contaminate any water supply in the Republic which is intended for public use;
(c) interrupt, impede or endanger at any place in the Republic the manufacture, storage, generation, distribution, rendering or supply of fuel, petroleum products, energy, light, power or water, or of sanitary, medical, health, educational, police, fire-fighting, ambulance, postal or telecommunication services or radio or television transmitting, broadcasting or receiving services or any other public service;
(d) endanger, damage, destroy, render useless or unserviceable or put out of action at any place in the Republic any installation for the rendering or supply of any service referred to in paragraph (c), any prohibited place or any public building;
(e) cripple, prejudice or interrupt at any place in the Republic any industry or undertaking or industries or undertakings generally or the production, supply or distribution of commodities or foodstuffs; or
(f) impede or endanger at any place in the Republic the free movement of any traffic on land, at sea or in the air,

in the Republic or elsewhere-

(i) commits any act;
(ii) attempts to commit such act;
(iii) conspires with any other person to commit such act or to bring about the commission thereof or to aid in the commission or the bringing about of the commission thereof; or
(iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit such act,

shall be guilty of the offence of sabotage and liable on conviction to imprisonment for a period not exceeding twenty years.

(4) Any person who has reason to suspect that any other person intends to commit or has committed any offence referred to in subsection (1), (2) or (3) and any person who is aware of the presence at any place of any other person who is so suspected of intending to commit or having committed such an offence, and who-

(a) harbours or conceals that other person;
(b) directly or indirectly renders any assistance to that other person; or
(c) fails to report or cause to be reported to any member of the police such presence of that other person at any place,

as the case may be, shall be guilty of an offence and liable on conviction to the penalty to which the person whom he so harboured or concealed or to whom he so rendered assistance or whose presence he so failed to report or to cause to be reported would have been liable on conviction of the offence which the last-mentioned person intended to commit or committed, as the case may be.

(5) No person shall be convicted of an offence in terms of subsection (1), (2) or (3) committed at any place outside the Republic, if such person proves that he is not a South African citizen and has not at any time before or after the commencement of this Act been resident in the Republic and that he has not at any time after 27 June 1962 entered or been in the Republic in contravention of any law.

(6) If the evidence in any prosecution for an offence in terms of-

(a) subsection (1) does not prove that offence but does prove an offence in terms of subsection (2), (3) or (4);

the accused may be found guilty of the offence so proved.

(7) For the purposes of subsection (1) (ii), and without derogating from the generality of the meaning of the word 'act', the undergoing of specific training or the possession of any substance or thing shall be deemed also to constitute the performance of an act.

(8) For the purposes of this section-

'prohibited place' means a prohibited place as defined in section 1 (1) of the Protection of Information Act, 1982 (Act 84 of 1982);

'public building' means any building which or part of which is occupied by the State, any institution or body instituted by or under any law and to which local or other government functions have been assigned.

UNQUOTE

Within this context the following information can be provided:

From the period 1 January 2001 up to the present:

a) The number of arrests of terrorists or their supporters: 27

b) The value of funds and assets frozen in relation to individuals and entities identified as terrorists or terrorist organisations: nil

c) Examples of successful investigations/prosecutions relating to terrorism and the financing of terrorism which could be made public:

Three people were convicted on charges of sabotage and sentenced to eight years imprisonment. One person was found guilty on a charge of terrorism in the "Boeremag" case (domestic terrorist group charged with treason) and twenty-two persons involved in this case are standing trial in the High Court.

B. Effectiveness of Counter-Terrorism Machinery

1.6 With reference to sub-paragraph 2 (e) of the Resolution, States are required to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts is brought to justice. Could South Africa provide the CTC with an outline of its laws relating to Cyber crimes as well as an outline of the provisions that prevent terrorists from abusing the Internet?

Chapter XIII of the Electronic Communications and Transactions Act, 2002 (No.25 of 2002) (**Addendum C**) provided the first statutory provisions on cyber crime in South African jurisprudence. The Act, administered by the Department of Communications, introduced statutory criminal offences relating to information systems and includes

(a) unauthorised access to data;
(b) interception of or interference with data;
(c) computer-related extortion;
(d) fraud; and
(e) forgery.

Any person aiding or abetting another in the performance of any of these crimes will be guilty as an accessory. Section 86 of the Act provides as follows on unauthorised access to, interception of or interference with data:

(1) Subject to the Interception and Monitoring Prohibition Act, 1992 (No. 127 of 1992), a person who intentionally accesses or intercepts any data without authority or permission to do so, is guilty of an offence.

(2) A person who intentionally and without authority to do so, interferes with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective, is guilty of an offence.

(3) A person who unlawfully produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data, or performs any of those acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilise such item to contravene this section, is guilty of an offence.

(4) A person who utilises any device or computer program mentioned in subsection (3) in order to unlawfully overcome security measures designed to protect such data or access thereto, is guilty of an offence.

(5) A person who commits any act described in this section with the intent to interfere with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users is guilty of an offence.

If the CTC has abuse of computer transactions on the Internet in mind when requesting an "outline of the provisions that prevent terrorists from abusing the Internet", then the Electronic Communications and Transactions Act deals effectively with this issue.

The Electronic Communications and Transactions Act in Chapter III deals with facilitating electronic transactions. It deals with the removal of legal barriers to electronic transacting. Part 1 provides for the legal recognition of data messages and records. Provision is made for the legal recognition of electronic signatures and "advanced electronic signatures" as a secure form of electronic signing. Electronic data is, subject to certain conditions, permitted to be retained for statutory record retention purposes, is regarded as being "in writing", and as a true copy of an "original" record, and provision is made for securing proper evidentiary weight of electronic evidence. Part 2 deals with the rights and obligations that follow from the communication of data messages, namely contract formation with the time and place of sending and receiving data messages, as well as the time and place where a contract is deemed to have been formed by means of data messages. The Act also provides for the validity of sending notices and other expressions of intent through data messages.

Chapter IV deals with E-government services. This Chapter facilitates electronic filing. It lists the requirements for the production of electronic documents and the integrity of information. Provision is made for a Department or Ministry to accept and transmit documents in the form of electronic data messages, to issue permits or licences in the form of a data message and to make or receive payment in electronic form.

Chapter V deals with cryptography providers. The Internet presents security challenges, which, without an effective regulatory framework, would pose a threat to the security of consumers and the State. This Chapter requires the suppliers of cryptography materials to register in the prescribed manner their names and addresses, the names of their products and a brief description thereof maintained by the Department of Communications. This allows investigative authorities such as the South African Police Service to identify which organisations provide the encryption technologies intercepted by them in terms of South African monitoring and interception laws. This enables the investigative authorities to approach these service providers to assist with deciphering the encrypted messages.

Chapter VI deals with authentication of service providers. Identification and authentication of the parties in cyberspace remains a challenge and poses threats to consumers and businesses. The Act provides for the establishment of an Accreditation Authority within the Department of Communications, allowing voluntary accreditation of electronic signature technologies in accordance with minimum standards. Once accredited, these "advanced" electronic signatures will allow a party to rely on their authenticity.

Chapter IX deals with protection of critical databases. In terms of its definition, critical data is information, which, if compromised, may pose a risk to the national security of the Republic or to the economic or social well being of its citizens. The Minister may prescribe matters relating to the registration of critical databases and require certain procedures and technological methods to be used in their storage and archiving.

Chapter XII of the Electronic Communications and Transactions Act deals with Cyber inspectors. Chapter XII of the Act provides for the Department of Communications to appoint cyber inspectors. The cyber inspectors may monitor Internet web sites in the public domain and investigate whether cryptography service providers and authentication service providers comply with the relevant

provisions. The inspectors are granted powers of search and seizure, subject to obtaining a warrant. Inspectors can also assist the police or other investigative bodies, on request.

South Africa signed the Council of Europe's Convention on Cyber-Crime on 28 November 2002. Arrangements are currently being made for the Protocol to the Convention to be signed, whereafter the Department of Justice will proceed with the simultaneous ratification of both instruments.

1.7 Without asking South Africa to disclose sensitive information, the CTC would be grateful for an outline of any specific training that South Africa may have developed for its administrative, investigative, prosecutorial and judicial authorities in order to implement sub-paragraph 2 (e) of the Resolution. This training could cover the following points:

- Typologies and trends in terrorist financing methods and techniques;
- Techniques for the tracing of assets, which represent the proceeds of crime or have been used for the financing of terrorism, with a view to ensuring that such property is frozen, seized or confiscated; and
- Anti-terrorism operations.

The South African Police Service, sponsored by "SaferAfrica", an independent non-governmental organisation, is in the process of developing a training programme for countries in the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO). The training programme includes investigative techniques, obtaining intelligence with regard to terrorist acts in order to prevent these acts from taking place and contains specific modules such as hostage negotiation, explosives identification and special forces intervention.

The South African Reserve Bank College has developed a training programme consisting of two modules that is designed to enable financial supervisors to fulfill their obligations in relation to anti-money laundering responsibilities. While the course addresses the issue of controls regarding terrorist funding and the international standards and actions in this regard, it has only dealt with the draft legislative framework that exists within South Africa. However, materials concerning the prevention of terrorist financing have been developed for presentation in the next financial year when it is expected that the relevant legislation would be enacted. The programme has involved participation from the South African Reserve Bank, the Financial Services Board, the National Gambling Board and the South African Revenue Services.

C. Effectiveness of Customs, Immigration and Border Controls

1.8 Sub-paragraph 2 (g) of the Resolution requires States to prevent the movement of terrorists or terrorist groups by establishing effective border controls. The CTC would be pleased to know the procedures or equipment, which South Africa has put in place at its borders to identify fraudulent or counterfeit passports.

At all South Africa's ports of entry ultra violet lights have been installed to detect fraudulent and counterfeit passports. At Johannesburg International Airport there is a document examination machine, which assists with the detection of fraudulent and counterfeit passports. The Movement Control System is loaded with all lost and stolen passports of other countries, as informed by them, and a person traveling on such a passport will not be admitted following detection by the Movement Control System. The Department of Home Affairs envisages placing Edison-like information systems at all the ports of entry.

The South African Police Service conducts the identification of fraudulent or counterfeit passports either through human observation or with electronic assistance. With regard to human observation, training courses for both border police and immigration include modules on the identification of fraudulent / counterfeit passports.

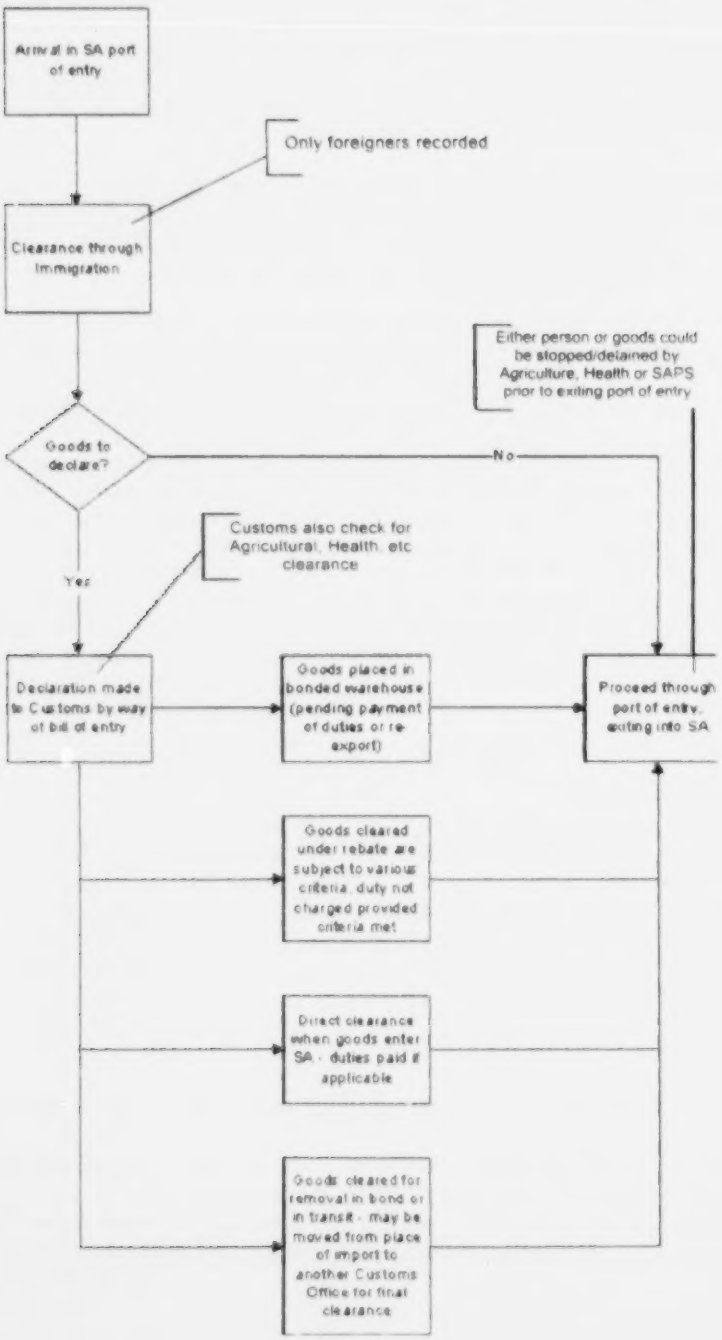
Procedurally, present checks are executed as a matter of course by immigration officials at all Points of Entry (PoE), especially airports. Police officials regularly carry out passport verification checks in the PoE in the post-immigration phase. A private security firm is also, for commercial reasons, employed at airports by air carriers to verify passport authenticity.

1.9 As regards sub-paragraphs 2 (e) and 2 (g), could South Africa provide an outline of the methods which it uses to process imports and exports as well as the steps which it takes to target for inspection or interdiction high risk cargo which may help to commit or finance terrorist acts. Could South Africa explain how, under the provisions of the Currency and Exchange Act, 1933 (cited at pages 3 and 4 of the first report) it prohibits and prevents illegal outbound movements of currency, negotiable instruments, gold and other high value materials which may provide financial support for terrorist groups? Do several law enforcement agencies coordinate their resources with a view to carrying out interdiction actions of this kind? Without compromising any sensitive information, could South Africa provide examples of successful interdiction operations?

Import, Export and Transit of Goods

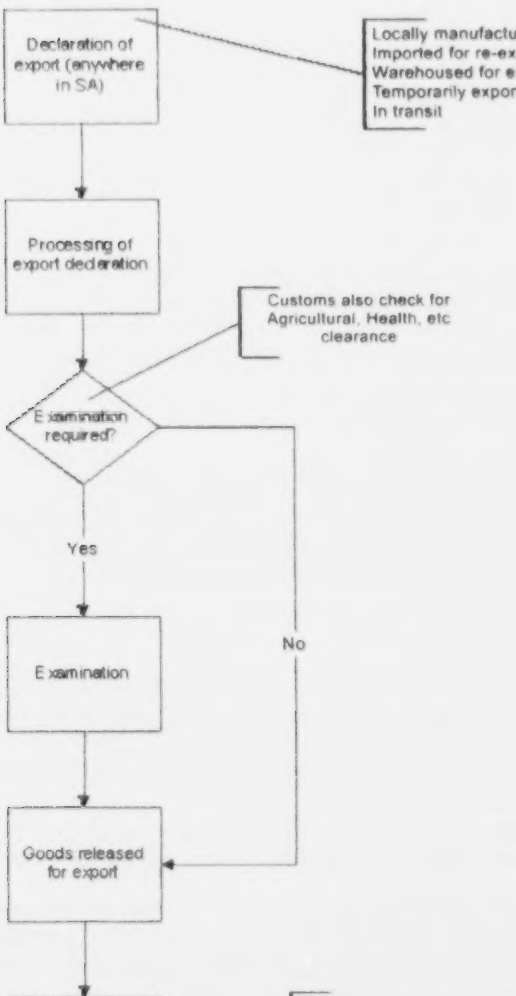
The flow chart below provides a high-level overview of the process involved in relation to imports, exports and transit of goods.

Importation


Arrival in SA port of entry
Only foreigners recorded
Clearance through Immigration
Either person or goods could be stopped/detained by Agriculture, Health or SAPS prior to exiting port of entry
Goods to declare?
No
Yes
Customs also check for Agricultural, Health, etc clearance
Declaration made to Customs by way of bill of entry
Goods placed in bonded warehouse (pending payment of duties or re-export)
Proceed through port of entry, exiting into SA
Goods cleared under rebate are subject to various criteria, duty not charged provided criteria met
Direct clearance when goods enter SA - duties paid if applicable
Goods cleared for removal in bond or in transit - may be moved from place of import to another Customs Office for final clearance

Note: All goods are subject to examination by Customs to ascertain whether they were correctly declared and whether the correct duties and VAT have been paid. Uncleared / detained / illicit goods will be detained / seized and placed in the State Warehouse from where they may be auctioned / sold, re-exported or destroyed by Customs.

Exportation



Customs Procedures

Arrival of Goods in South Africa

Goods arrive in the Republic by one of the following modes of transport: Air, Sea, Road, Rail or Post. In order for Customs to safeguard any revenue due to the State and to ensure compliance with national legislation, the importer must declare to Customs what has been brought into the country and the mode of transport utilised. National legislation allows an importer / agent 7 days (or more, depending on the type of goods) in which to clear goods from the time they have landed in the Republic. Goods not declared or cleared within this time period may be removed and detained in a State Warehouse. It must be noted that certain goods will require an import permit, which must be produced at the time of clearance.

Arrival of Travellers in South Africa

Every person entering or leaving the Republic must report to the Customs office nearest to the point at which the border was crossed, and declare whatever goods are in his/her possession. Travellers are required to declare all goods purchased abroad or gifts carried on behalf of other persons to Customs. In line with international best practice, Customs affords travellers various allowances enabling them to import goods in limited quantities and value, without payment of duty.

Departing Travellers

Travellers leaving the Republic are required to register with Customs all expensive items that are identified by means of a serial number, such as cameras and portable computers. Registration of such goods at the time of temporary exportation will facilitate re-importation, i.e. goods that have been registered on such forms will not be dutiable on re-importation.

Importation / Export Clearance of Goods

The importer is required to complete a bill of entry. The clearance process includes accepting and checking the goods declaration against the documents produced (invoice, bill of lading, certificate of origin, permits, etc.), examination of the goods if necessary and the assessment and collection of duty and VAT. The exporter is required to complete the original and an audit copy of each export declaration form.

Integrated Customs Risk Analysis Solution (ICRAS)

For the South African Revenue Service Customs to optimise compliance amongst its clients, proper risk analysis is of utmost importance. ICRAS is currently being rolled-out to Customs offices. It will cover all business areas where risk analysis is required, making full use of the technology at the disposal of the South African Revenue Service.

Container Security Initiative (CSI)

CSI is a co-operative arrangement between the US Customs and Border Protection Service and South African Customs in order to:

- Make maritime trade routes safe and secure from harmful economic elements and acts of terrorism,
- Identify and pre-screen high risk consignments through use of advance cargo information, and
- Utilise non-intrusive forms of inspection, i.e. X-ray scanner technology to facilitate the examination of containers and cargo content.

South Africa and the United States entered into a formal bilateral agreement with the signing of the Declaration of Principals on CSI between the two countries on 27 June 2003. In effect this declaration seeks to intensify co-operation between the respective Customs administrations within the framework of the Customs Mutual Assistance Agreement signed in Washington, D.C. in August 2000. The exchange of information will ensure identification, screening, and where necessary the examination of high-risk containers. To further enhance this co-operation the declaration provides for the stationing, on a pilot basis, of US Customs and South African Customs officials at harbours which ship significant volumes of containerised traffic between the two countries.

The port of Durban is the 17th CSI port to become operational worldwide since the CSI was proposed in January 2002, and South Africa's first.

Carriers conveying goods into the US are now required to register with the US CBP to lodge manifests electronically on its Automated Manifest System (AMS), and all cargo must be screened before being loaded on the vessel.

The World Customs Organisation (WCO), through its Task Force on Supply Chain Security and Trade Facilitation has recently developed a set of guidelines and instruments to assist its 161 members in the adoption of the new strategic approach to customs compliance and enforcement. South Africa has already been working on several of these elements, and will focus more specifically on the export, transit and transhipment modes of its business in 2004. Some of these measures include the Customs Scanner Implementation Project, the Unique Consignment Reference, the WCO data model and its 27 essential data elements for risk management purposes.

Container Scanner Implementation Project (CSIPP)

Parallel with the Container Security Initiative, and in support of the expansion of the CSI capability at other seaports, inland consolidation centres and certain land border crossings, the South African Revenue Service has embarked upon a Public Private Partnership (PPP) approach towards the sourcing of an effective cargo scanning package.

Evaluations of prospective Transaction Advisors (TA) have been completed and the appointment of the preferred TA will occur shortly. Besides being a stipulation of National Treasury's PPP policy, the TA will assist the South African Revenue Service in the feasibility of scanners at key points of entry and exit in South Africa. Once proven, the TA will assist the South African Revenue Service in the preparation of a tender for a preferred scanner outsource provider. The anticipated time frame for completion of the PPP is May 2004, with the rollout of scanners occurring shortly thereafter.

Enforcement Successes

For 2003/2004 to date approximately R 1.1 billion in value has been either detained or seized by Anti Smuggling teams. Specialised teams to focus on high-risk areas have been proven successful. Results in key areas are:

- Drugs: 35 Seizures
- Counterfeit: R424 million in value seized
- Cigarettes (Contraband): R4,8 million in value seized
- Cash: 18 seizures amounting to R2,3 million

Eight criminal cases are in progress.

Combined South African Police Service and Customs teams, trained in identification, profiling and search or seizure of high-risk cargo operate at designated Points of Entry (PoE). Further initiatives are also being implemented to ensure compliance with the Customs and Excise Act and the measures that were implemented to ensure the optimization of revenue collection and the protection of society by identifying and detecting harmful activities.

Exchange Control Measures

The Currency and Exchange Act of 1933 and the Exchange Control Regulations of 1961 as amended, empower the Minister of Finance to instruct Authorised Dealers to freeze funds and financial resources and block accounts held in South Africa to prohibit the movement of capital into and from South Africa. This Act would also be applied to prevent the movement of capital that may provide financial support for terrorist groups.

Authorised Dealers are expected to record a wide range of information. This information is held in the Cross Border Foreign Exchange Transactions Reporting System and the information is analysed by the Exchange Control Investigations Division of the South African Reserve Bank, for accuracy. Numerous cases have been referred to the South African Police Service.

In reply thereto, and with specific reference to the conveyance of cash but not necessarily limited thereto, Exchange Control Regulations 3(1)(a) and (b) state as follows:

"3. (1) Subject to any exemption which may be granted by the Treasury or a person authorised by the Treasury, no person shall, without permission granted by the Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose –

(d) take or send out of the Republic any bank notes, gold securities or foreign currency, or transfer any securities from the Republic elsewhere; or
(e) send, consign or deliver any bank notes, gold, securities or foreign currency to any person for the purpose of taking, sending or removing such bank notes, gold, securities or foreign currency out of the Republic; or
(f) take any South African bank notes into the Republic or send or consign any such notes to the Republic."

1.10 Relative to sub-paragraph 1 (a), the CTC would be pleased to know what legal and administrative measures are in place in South Africa to track the production in and movement out of the country of, gold, diamonds and other precious materials mined in South Africa? Are South African mine owners or mine leaseholders required to supply data to the relevant authorities concerning the production, waste, sale and export of the materials which they produce?

Legal and administrative measures to track the production and movement of gold, diamonds and other precious metals

The following legal and administrative measures are in place to track the production and movement out of South Africa with regard to gold, diamonds and other precious metals:

Gold

Import

Authorisation from the South African Reserve Bank is needed before any unwrought (raw) gold can be imported into South Africa. As soon as unwrought gold is imported, the Customs and Excise Department must be notified (disclosed by person or company). The buyer should also supply the necessary documentation and the necessary fees should be paid. Only then will the person or company be authorised to take possession of the raw material.

Only a registered person or company authorised to possess such material may be in possession thereof i.e. they should be registered in terms of the Mining Act, 1967 (Act No. 20 of 1967). The registered person or company must ensure that a permit to transport such material is obtained from the South African Police Service.

The import of all second-hand precious metal, waste and scrap (gold and platinum) is subject to import control measures and an import permit is required from the Department of Trade and Industry's import control division (now ITAC), except in the case of gold for which the Reserve Bank issues import permits.

Export

Only a registered person or company will be permitted to export such material and should also be registered in terms of the Mining Act, 1967 (No. 20 of 1967). The registered person or company should notify (disclosure by person or company) that the raw material will be exported and the necessary fees should be paid.

Diamonds

Export

If the Dealer has won a parcel at the tender or purchased it from another dealer and wishes to export the diamonds, two options can be followed:

- To offer them for local sale at the Diamond Exchange (Bourse) – this will exempt him/her from the 15% Export Duty payable.

- To pay the Export Duty (15%) and export the goods directly without offering them for sale locally.

Procedures at the Bourse

The Bourse will firstly request a Dealer's Licence. A Company will be requested to produce an authorised representative certificate. A submission fee, depending on the value of the diamonds, will have to be paid.

There are four different categories of submission fee:

"A"	$0	To	$29,999-00	$20-00 + Vat
"B"	$30,000-00	To	$74,000-00	$45-00 + Vat
"C"	$75,000-00	To	$224,999-00	$115-00 + Vat
"D"	$225,000-00	To	$449,999-00	$345-00 + Vat
"E"	$450,00-00	To	$...	2% of Total Value + Vat

NOTE: *a single stone falling under "E" Category will be subject to fee of "D" category*

Following this procedure, the Bourse accepts the goods for four working days. If there is an offer on the closing date, the Bourse will fax the client a K-Form, containing the relevant information. The same will occur if there is no offer by the closing date.

After collecting the parcel and the K-Form from the Bourse, the client will write out an invoice, which will be presented to a bank. The client will inform the bank that the diamonds are to be exported and they will complete a F178 form, which will be stamped and signed by bank officials. The client can then proceed to a courier company, where they will prepare a DA 500 form.

At this point in the process, the client should have in his/her possession the following:

- 5 copies of the invoice
- 5 copies of the Form F178
- 5 copies of the Form DA500
- copies of the K-Form
- A parcel of the diamonds

The client will then call the South African Diamond Board for an appointment.

Procedures at the Board

The client will present the documentation and the diamonds to the Board and will be allocated to an inspector. The inspector will verify the contents of the documents and the packet of diamonds. The inspector will give the client a Form N (I) to complete, an export declaration form (Form KPC (iii)) and declare that the unpolished diamonds in the parcel have been acquired in a lawful manner.

The inspector will then inspect the diamonds and verify conformity with the Export Return (N(i)). After sealing the diamonds in a tamper-resistant container, the inspector will issue a validating Kimberly Process (KP) Certificate. The original certificate is affixed to the container in a manner that ensures that it cannot be separated from the container. The exporter is furnished with an authenticated copy. The inspector will clear the export, whereupon the diamonds can be taken to the courier for transportation.

The client will be charged for the following services:

- $75 Service Fees
- $75 Bourse Fees
- 0.17% Levy on the value of the Diamonds
- 14% Vat

Supplying Data to the Authorities

Producers, buyers, sellers and transporters are required by law to hold permits to conduct their activities. They are also legally bound to keep registers to track the production in and movement out of the country of gold, diamonds and other precious materials mined in South Africa. The South African Police Service regularly inspects this documentation to verify that the activities are conducted legally.

1.11	The CTC was pleased to note, at page 24 of the first report, that South Africa was at present replacing its identity documents, which are currently in booklet form, by a more secure Smart card identity document, which contains additional security features. Without disclosing any sensitive information, could South Africa provide the CTC with a progress report on the changeover to the new identity documents.

In accordance with National Treasury regulations, the Department of Home Affairs is presently undertaking an investigation into the appropriateness of a Public Private Partnership (PPP) for the procurement structure for the design, development, implementation and operation of the new smart ID card. The completion date for the ID card PPP study is the end of January 2004, with the final tender being released in the third quarter of 2004.

1.12	The CTC would be pleased to know, in regard to Sub-paragraph 2 (g), what measures are being taken to ensure that in-transit airline passengers do not evade detection at airports and enter South Africa illegally? Does South Africa compare manifests of in-transit air passengers with manifests of outbound airline passengers with a view to ensuring that all transit passengers have boarded their respective flights? Could South Africa outline its procedures for vetting airport personnel, including airport, airline and ramp employees?

In-transit airline passengers

In-transit passengers are controlled within a restricted area within the airport terminal. It is the responsibility of the South African Police Service Border Police and the Immigration Department to ensure that these passengers do not enter the country illegally,

South Africa does not at present compare airline manifests to ensure the departure of transit passengers.

Operationally, the South African Police Service has introduced ad hoc projects targeting high-risk flights to identify and prevent abuse of the transit facility at Johannesburg International Airport and has obtained substantial successes with these projects.

All persons requiring access to the restricted areas (airside) of the airport are required to be in possession of a valid permit. Prior to the issuance of such a permit, the applicant would be subjected to a background check and a criminal record check. The South African Police Service and the intelligence community carry out these checks. Airport personnel at all ACSA airports are thus vetted and issued with electronic cards, which control access in the airports.

1.13 In regard to Sub-Paragraph 2 (g) of the Resolution, the CTC would be grateful for an outline of any procedures which South Africa has established in order to supply advance information concerning international passengers and cargo to its own authorities and to those of other States so as to enable them to screen for suspected terrorists and prohibited cargo before disembarkation and unloading.

International Passengers

Due to historical inadequacies as well as global modernisation, procedures regarding passenger movement are currently being reviewed. There is currently no regulatory requirement for advanced passenger information within South Africa.

The matter has been identified by the National Aviation Security Committee (NASC), which is chaired by the South African Civil Aviation Authority (CAA). It is envisaged that a research project will be established, in order to make recommendations to the NASC in respect of new regulations for the 2004 regulatory review. In addition a passenger declaration system has been implemented at designated Points of Entry (PoE). Passport scanners and declaration form scanners are also being installed.

The CAA has also completed the drafting of Cargo Security Regulations (Civil Aviation Regulations Part 108), which are to be forwarded to the Minister of Transport in 2004 for approval.

Cargo

The manifest acquittal system which has been successfully rolled-out to sea harbours is now being implemented for air traffic. Imbedding of the system is expected to start during January 2004.

In terms of the Rules currently being circulated regarding the operation of the manifest acquittal system, the carrier of a vessel that is due to arrive with cargo for discharge at a port in the Republic on a voyage from a port outside the common customs area must submit a vessel schedule -

(aa) if the duration of the voyage from the first port of departure to its arrival at the first port of discharge in the Republic is likely to take more than 10 days, not later than 10 days before its arrival; or

(bb) where the duration of the voyage will be less than 10 days, not later than 12 hours before its arrival.

In addition, the airport authority must submit a schedule for every aircraft that is due to arrive at that airport on a flight from a place outside the common customs area with cargo to be discharged at that airport not later than 1 hour before its arrival.

1.14 As regards Sub-paragraph 2 (g) of the Resolution, could South Africa provide the CTC with an outline of its legislative provisions concerning the granting of citizenship and other civic rights in South Africa? Can a foreigner, who is granted citizenship or other civic rights in South Africa, change his or her name? What precautions are taken to establish the true identity of a person before new identity papers are issued to him or her? in addition, what measures are in place to prevent marriages of convenience taking place between foreigners and South Africans and to prevent the use of fraudulent marriage documents from being used to obtain South African citizenship?

South African citizenship is regulated by the South African Citizenship Act, 1995. The Act provides for three basic forms of citizenship, namely citizenship by birth, by descent and by naturalisation. The Act is enclosed as **Addendum A**.

Only South African citizens and South African permanent residents are presently recorded in the computerised Population Register. Such persons, subject to the provisions of the Births and Deaths Registration Act, 1992, may apply for the change of their names. The Act requires a good and sufficient reason for a change of a surname. A forename or forenames may however be changed upon application.

The only manner in which foreign nationals can obtain South African citizenship is through naturalisation. To qualify for naturalisation, a foreigner must inter alia have lawful permanent residence status in the country, comply with the residential requirements (generally five years of permanent residence in the country), be of good character and meet various other requirements as specified in section 5 of the South African Citizenship Act of 1995. All applicants of 16 years and older, are also subject to a Criminal Records Check.

The fingerprints and photographs of applicants applying for the re-issuing of their identity documents are checked against their fingerprints and photographs stored in the Population Register.

All the Department of Home Affairs offices have been alerted to carefully check that prospective parties to a marriage comply with the legal requirements for a marriage. Marriage officers, however, are obliged to marry the parties if they comply with these requirements, such as both have consented to the marriage, are not prohibited to marry in terms of age, relationship, etc. A record is being kept of complaints of fraudulent marriages and checked against the Department of Home Affairs' permanent residence records.

1.15 In regard to sub-paragraph 2 (g) of the Resolution, could South Africa outline the procedures, which it has in place to protect its identity documents (for example, birth certificates, marriage certificates, identity documents and passports) from theft, fraudulent issuance or other abuses, which may assist terrorist activity?

Strict application and issuance procedures are in place to protect identity documents against abuses. The requirements for the application and issuing of the documents are prescribed in the respective legislation governing the documents. In brief the processes are:

(a) **Birth certificates**

To consider registration of a birth the status of the child is carefully checked. The procedures are progressively stricter the older the child. In the case of children 15 years and older an application for an identity document which includes a full set of fingerprints and photos forms part of the birth registration process.

(b) **Marriage certificates**

Only *ex officio* or duly appointed marriage officers may solemnise civil marriages. Two witnesses, the parties to the marriage and the marriage officer must sign a marriage register containing details of the spouses and the marriage immediately upon solemnisation of the marriage.

Before the Department of Home Affairs registers the marriage, the status and details of the spouses are first carefully checked against the National Population Register.

(c) **Identity documents**

All new applications require a full set of fingerprints and photos, which are carefully checked against the Department's fingerprints and identity records. If the applicant's birth has not been registered, an application for late registration of birth must accompany the identity document application.

(d) **Passports**

South African citizen passports are only issued to South African citizens whose births have been recorded in the National Population Register and to whom a 13-digit South African identity number has been allocated.

Refugee passports are issued to only refugees with approved asylum status in the country, and Documents for Travel Purposes to only South Africa permanent residence holders or stateless persons lawfully in the country who for acceptable reasons cannot obtain a passport from their country of origin.

D. Effectiveness of Controls Preventing Access to Weapons by Terrorists

1.16	Sub-Paragraph 2 (a) requires States to eliminate the supply of weapons to terrorists. South Africa achieved notable success in confronting urban terrorism in the late 1990s through its People Against Gangsterism and Drugs (PAGAD) initiative. The multidisciplinary law enforcement approach, highlighted by Operation Good Hope, led to numerous seizures of illegal weapons. Without compromising ongoing operations, could South Africa outline the efforts, which it makes to recover illegal firearms with a view to denying terrorists access to them? These efforts could include, for example, weapons purchase amnesty programs, operations similar to Good Hope etc.

The following statement in paragraph 1.16 of the Committee's letter is incorrect namely: "South Africa achieved notable success in confronting urban terrorism in the late 1990s through its People Against Gangsterism and Drugs (PAGAD) initiative. The multi-disciplinary

law enforcement approach, highlighted by Operation Good Hope, led to numerous seizures of illegal weapons". Members of PAGAD had been involved in perpetrating acts of urban terrorism in the Western Cape. PAGAD was not an initiative taken by Government to counter urban terrorism. Government's actions were directed against members of PAGAD, who committed acts of terrorism.

The South African Police Service Firearm Strategy is aimed at eradicating the availability of illicit firearms for their use in crimes of violence and has a focus on the control of legal firearms. Such crimes include terrorism.

The South African Police Service has instituted a five-pillar approach to managing firearms in the country.

The first pillar focuses on firearm-related regulators, including the Firearm Control Act, 2000 (Act No.60 of 2000) and the Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Related Materials.

The second pillar is called "The Development and Maintenance of Effective Control Processes and Procedures for Firearms" and incorporates the implementation of the Firearms Control Act, including a new Firearms Control System that will manage the processes of firearms from acquisition to export or destruction. Currently the South African Police Service is conducting an audit of all firearms under the control of government departments to reconcile records and identify obsolete or redundant firearms that can be destroyed.

The third pillar of this strategy focuses on the reduction and eradication of the illegal pool and criminal use of firearms. This pillar focuses on the criminal side of firearms possession and includes illicit trafficking, organised crime, cross-border efforts and other measures.

The fourth pillar focuses on the prevention of crime and violence through awareness raising and social crime prevention partnerships.

The fifth and newest pillar, is entitled Regional Firearms Interventions. Its intent is to ensure co-ordinated planning, implementation, monitoring and evaluation of firearm initiatives aimed at reducing the proliferation of firearms for use in crime and violence in the Southern African region by:

- Managing all regional policy implementation on firearms (e.g. the SADC Firearms Protocol) and operational interventions;
- Managing regional requests for assistance by countries or agencies in Southern Africa, where the South African Police Service is the initiating or implementing agency.

Through this fifth pillar the South African Police Service is involved in policy issues such as the SADC Protocol and the United Nations Programme of Action, as well as operational matters such as co-operation with Mozambique through Operation Rachel or cross-border firearm operations.

In addition, the South African Government has adopted a position that all surplus, redundant, obsolete and confiscated small arms of a calibre of 12,7 mm and below should be destroyed in order to prevent these from ending up in the illicit small arms trade. This illicit trade would extend to terrorist activities as well. In this regard the South African National Defence Force

(SANDF) has completed the destruction of 271 867 of these weapons by May 2001. In addition, the South African Police Service destroyed 3 346 redundant or obsolete small arms and light weapons, as well as 9 070 forfeited firearms in 1999/2000. In July 2001, the SAPS announced that it had earmarked 11 057 confiscated firearms and 73 814 redundant or obsolete SAPS firearms for destruction. During 2001 and for the period ending August 2002, 35 966 of these redundant firearms, plus an additional 3 328 confiscated firearms had been destroyed.

The South African Government is also assisting neighbouring countries in the destruction of surplus, redundant, obsolete and confiscated small arms and light weapons. The SANDF assisted the Kingdom of Lesotho with the destruction of its Defence Force surplus stock of small arms, light weapons and components. In this regard, 4 240 of these weapons and components were transported to and destroyed in South Africa.

Operation Rachel, a joint weapons collection and destruction programme, between South Africa and Mozambique is aimed at destroying illegal firearms. Operation Rachel has been successful in drastically decreasing the flow of firearms to South Africa from Mozambique and besides it being primarily aimed at weapon destruction, it has also had a positive effect on confidence and capacity building in Mozambique.

The table below sets out the achievements of Operation Rachel for the 2001-2002 period. When considering types of weaponry destroyed in these operations it can be seen that it includes those types commonly used by terrorist groups.

TYPE	2001	2002	TOTAL
HANDGUNS	372	375	747
SUB-MACHINE GUNS	467	562	1029
RIFLES	2943	3768	6711
LIGHT/HEAVY MACHINE GUNS	148	225	376
MORTARS	32	17	49
LAUNCHERS	57	64	121
CANNONS/GUNS	2	65	67
SMALL ARMS AMMUNITION	486000	11004018	11490018
CANNON/GUN AMMUNITION	139	11	150
MORTAR BOMBS	1060	321	1381

PROJECTILES/ROCKETS/ MISSILES	37	508	545
BOOSTERS/ROCKET MOTORS	58	201	259
INITIATORS/FUSES	398	278	676
GRENADES	537	103	640
PERSONNEL MINES	96	49	145
DEMOLITION MINE/CHARGE	-	-	-
VEHICLE MINES	-	8	8
EXPLOSIVES (Kg)	12	87	99
FUSE & CORD (m)	-	-	-
DETONATORS	244	1479	1723
MAGAZINES	558	14991	15549

The South African Police Service also took part in Regional Simultaneous/ Bilateral Operations to Combat Illicit Firearms Trafficking. These two operations followed a multi-disciplinary approach and enhanced communication and co-operation between members working on the border posts on both sides of the South African/Mozambican border.

1.17 The CTC is encouraged to see that South Africa, as required by sub-paragraph 2 (a) of the Resolution and as noted at page 13 of its second report, has designed a regulatory system to ensure that hazardous toxic chemical, biological, and radiological materials and their waste products do not fall into the hands of terrorists. In that regard, without compromising any sensitive information, could South Africa provide the CTC with information concerning any programs, special procedures or personnel which it has put in place to provide the appropriate safety and law enforcement responses in the event that any illegally diverted material is detected? The CTC would be grateful to learn the procedures, which South Africa would use to notify other countries, in the event of such an eventuality occurring. If South Africa has such capabilities, would it be able and willing to assist other countries in preparing for such eventualities?

It should be pointed out to the Counter-Terrorism Committee (CTC) that the information contained on page 13 of South Africa's first report to the CTC (S/2001/1281) related to non-proliferation of weapons of mass destruction and though not directly designed for the combating of terrorism, could indirectly contribute to it.

Different Government Departments are responsible for exercising control over materials that could be utilised by terrorists, for example radioactive sources for industrial and medical purposes (Department of Health), source materials for the nuclear industry and radioactive

waste (Department of Minerals and Energy). Each Department has its own regulatory control system and relevant training programmes.

A joint committee to lay down procedures and determine a Work Plan in the event of Biological, Radiological, Nuclear (BRN) incidents is in the process of being established. Both the South African Police Service and the South African National Defence Force are part of the committee. A Nuclear Facility Protection Committee is also currently working on guidelines for the security and protection of nuclear facilities. This includes the transport, storage and control of nuclear material.

Pending the finalisation of these processes, South Africa would use the standard communication channels provided for under the various related regimes and treaties to notify other countries that any illegally diverted material is detected.

South Africa would consider assisting other countries in training if provided for under specific bilateral agreements with the relevant countries.

1.18	The CTC is aware that South Africa may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of South Africa's response to these matters, as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.

The public summary of the Mutual Evaluation Report of the Financial Action Task Force ("the FATF") which was compiled on the occasion of South Africa's joining of the FATF is appended as **Addendum B**. This report reflects the findings of an assessment of South Africa's AML/CFT regime carried out by a team of experts in April 2003.

2. ASSISTANCE AND GUIDANCE

2.1	The CTC wishes to emphasize once more the importance it attaches to the provision of assistance and advice in connection with the implementation of Resolution 1373.

The South African security community – in expressing its concern with the domestic and international terrorism threat and in confirming its commitment to the fulfillment of South Africa's international counter-terrorism obligations – acknowledges the vital role of intelligence in combating terrorism. In this regard the security community acknowledges and continuously gives effect to the critical importance of intelligence co-operation with its counterparts in other countries in respect of information sharing and skills development.

2.2	The CTC notes that the Government of South Africa did not request technical and financial assistance to further enhance its capacity to deal with terrorist related risks.

The Government of South Africa will inform the CTC of any requirements for technical and financial assistance as these are identified.

2.3	At this stage of its work, the CTC will focus on requests for assistance that relate to "Stage A and B" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the Resolution is a matter of agreement between them. The CTC would be grateful to be kept informed of any such agreements and their outcome.

The South African Government will inform the CTC of any bilateral agreements regarding assistance on "Stage A and B" matters as and when they are entered into.

LIST OF ADDENDA

ADDENDUM A: South African Citizenship Act, 1995 (Act No. 88 of 1995)

ADDENDUM B: Public Summary of the Mutual Evaluation Report of the Financial Action Task Force (FATF)

ADDENDUM C: Electronic Communications and Transactions Act, 2002 (Act No.25 of 2002)

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Letter dated 27 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 December 2003 (S/2003/1154). The Counter-Terrorism Committee has received the attached fourth report from the Czech Republic submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 26 February 2004 from the Deputy Permanent Representative of the Czech Republic to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to your letter dated 21 November 2003, I submit herewith the attached report from the Government of the Czech Republic, following the comments and questions of the Committee (see enclosure).

The Czech Republic welcomes the enhanced cooperation with the Committee and has been carefully following the outcome of its work. The Czech Republic has also been thoroughly monitoring and analysing all the recommendations and initiatives provided by the Committee with respect to the implementation of Security Council resolution 1373 (2001).

Being aware of the importance and urgency that a comprehensive issue such as the fight against terrorism represents and in order to provide the Committee with additional relevant information, the Government of the Czech Republic has provided, as the annex to its report, the report of the World Bank and the International Monetary Fund on the Czech Republic's observance of the Financial Action Task Force's 40 recommendations for anti-money laundering and 8 special recommendations on combating the financing of terrorism.

On behalf of the Czech Republic, I would like to thank the Committee for all its efforts in fighting international terrorism.

(*Signed*) Alexandr **Sporýš**
Deputy Permanent Representative
and Chargé d'affaires, a.i.

Enclosure*

REPORT OF THE CZECH REPUBLIC FOR THE COUNTER-TERRORISM COMMITTEE

1. Implementing measures
Effectiveness of financial system protection

1.1. For the effective implementation of paragraph 1(a), states must have an efficient and effective mechanism intended to prevent and suppress the funding of acts of terrorism. Does the Czech Republic arrange specialist training on the application of the law for its administrative authorities, investigation departments, state prosecutor's office, and judicial bodies, concentrating on: the typology of, and trends in, the methods and techniques used to finance terrorism; techniques to identify assets which are the product of crime or which serve to finance terrorism, and the seizure, freezing, or confiscation of such assets? Please give a brief description of the characteristics of the relevant programmes and courses. What mechanisms or programmes are organized by the Czech Republic in various sectors of the economy to provide training on the opportunities of uncovering suspicious or unusual transactions connected with terrorist activities and on the opportunities of preventing the movement of money connected with illegal activities?

The training of judges, public prosecutors, and other persons at the Ministry of Justice is the responsibility of the Academy of Justice and the Institute for the Further Education of Staff of the Ministry of Justice. The Academy of Justice holds a number of seminars every year on topical issues, which are intended primarily for judges and public prosecutors involved in the given field. In the framework of the training programme for 2003/2004, at least eight single-component and dual-component seminars have been prepared to cover serious financial and economic crime, the issue of detaining persons and items and making decisions on intelligence means and devices in accordance with the Rules of Criminal Procedure, and international and European cooperation in criminal cases. Three of these seminars (on serious economic crime, issues of economic and property crimes, and issues of detaining persons and items and making decisions on intelligence means and devices in accordance with the Rules of Criminal Procedure) have already taken place and were attended by 128 judges and public prosecutors. As the focus of these seminars indicates, the knowledge gained here can be used in specific cases involving the investigation or prosecution of terrorism.

Between 26 May and 6 June 2003, a mission of experts from the International Monetary Fund and World Bank conducted an assessment in the Czech Republic of the fight against money laundering and the financing of terrorism. On 6 June the first draft, an 'Aide Memoire', of a document highlighting the key conclusions was presented. Based on the Mission's evaluation report, an analysis of topologies and trends related to the issue of the fight against money laundering and the financing of terrorism will be prepared in 2004. This analysis will be followed up by case studies concentrating on how to identify means of evidence. The resultant findings will be incorporated into expert training prepared for staff of the Unit for the Detention of Corruption and Financial Crime of the Service of

* Annexes are on file in the Secretariat and are available for consultation.

Criminal Police and Investigation (Police Academy) and training in the scope of a PHARE programme (the Police of the Czech Republic, experts from the Ministry of Finance, the General Prosecutor's Office).

1.2. With reference to the first report of the Czech Republic (on page 3), it is stated that close cooperation has been established between investigative, prosecuting, and adjudicating bodies which operate at the Ministry of Finance, the customs authority, the intelligence services, and the Czech National Bank. CTC would welcome information about the method used to coordinate their activities. Has the Czech Republic created the relevant mechanisms (e.g. a working group) to ensure adequate cooperation and pooling of information between the various state authorities which contribute to investigations into the financing of terrorism (e.g. the police, the customs authority, financial intelligence services, and other competent bodies)?

During 2003, this cooperation took place in the scope of three working groups specializing in specific aspects of the fight against terrorism funding, tasks established in the text of the National Action Plan to Combat Terrorism, and evaluations of foreign-policy commitments of the Czech Republic in the fight against terrorism.

The **International Group** was set the task of drawing up an overview of the requirements of the EU and other international entities whose decisions, recommendations, and/or regulations are binding on the Czech Republic, whereby these requirements relate to the issue of combating terrorism, including the financing of terrorism. The Ministry of Foreign Affairs was responsible for leading the group. This task was fulfilled and the first document was produced in February 2003; other documents on the same theme have followed up on this initial material.

The **Law Group** was set the task of conducting an analysis of defects in the Czech Republic's criminal law which could prevent or hinder the punishment of those who commit crimes connected with terrorism. Special emphasis was placed on penalizing all forms and methods of committing terrorism-related crime, on identifying, seizing, and confiscating property, financial assets, and other values used or planned for the purpose of committing terrorism-related crime or acquired through terrorism-related crime, and on the duty to report or supply information in cases related to the tracking-down of such assets. Representatives of the Ministry of Justice, the General Prosecutor's Office, and the Ministry of the Interior worked together in this group.

The **Administrative Law Group** was set the task of seeking out a new legal framework for the optimal means of transformation and practical enforceability of sanction lists related to the combating of terrorism, with a special emphasis on the financing of terrorism. Group members were representatives of the Ministry of the Interior, the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Transport and Communications (subsequently the Ministry of Transport), the Ministry of Culture, the Czech Securities Commission, and the Czech Banking Association.

At the end of 2003, the activities of these groups were terminated. Tasks which were not accomplished will be reformulated in the text of the National Action Plan to Combat Terrorism for 2004, which the government is expected to approve at the end of April or the beginning of May 2004. In order to increase the superior standard of cooperation between the entities involved, these entities agreed on a more specific procedure for setting individual tasks, enabling an unequivocal interpretation to be reached in such a complex issue.

Besides the groups mentioned above, there is also an informal group called the Clearing House, which was set up in autumn 2002 at the instigation of the Ministry of Finance (Financial Analytical Unit). The aim of this group is to contribute to the coordination and exchange of information between the individual bodies active in the fight against money laundering and terrorism funding, and to ensure the uniformity of their output in an international context. Meetings of this group are attended by representatives of the Ministry of Finance, the Ministry of the Interior (including the Police of the Czech Republic), the Czech National Bank, the Czech Banking Association, the Ministry of Justice, and the Ministry of Foreign Affairs. All the members of this group meet about three times a year. Between meetings, individual members cooperate on specific tasks as required.

In addition, several other working groups (their outputs are one of a not openly published) have existed for temporary periods to cover specific aspects of reducing security risks.

1.3. If paragraph 1(d) of the Resolution is to be implemented successfully, an effective mechanism must be available to ensure that the funds gathered by organizations which pursue (or claim to pursue) charity, social, or cultural goals are not used for purposes other than declared purposes, in particular to ensure that they are not used to fund terrorism. In this respect, CTC would welcome information about the body tasked with this activity in the Czech Republic. CTC would also welcome information about the procedures and working methods of this body and about the method used to coordinate its work with the work of investigative, prosecuting, and adjudicating bodies. Are there procedures to respond to requests from the governments of other countries to investigate specific organizations suspected of having terrorist links? Has a nongovernmental organization been prosecuted in the Czech Republic on suspicion of contributing to the financing of terrorism? If yes, please specify the procedures applied and the result of these proceedings.

On 6 August 2003, the Czech government adopted Resolution No 829, on the establishment of the Financial Police, with effect as of 1 July 2004. Under this resolution, the government decided to set up a specialized unit of the Police of the Czech Republic to combat the most serious cases of tax crime, customs delicts, and any of the related most serious forms of economic crime, including the financing of terrorism. The Financial Police, established within the Ministry of the Interior, will be a national unit with offices in the regions.

The International Police Cooperation Department of the Police Presidium of the Czech Republic is responsible for implementing the procedures applied at the Ministry of the Interior when requests are received for international cooperation in the field of investigations; as yet there are no special regulations for terrorism.

Following the Czech Republic's accession to the EU (1 May 2004), the specialized anti-terrorism police unit (Unit for the Detention of Organized Crime of the Service of Criminal Service and Investigation) will be connected to the Bureau de Liaison network, which will link it to counterparts in EU Member States. Certain requests for immediate cooperation, regarding the provision of information, will be transmitted via this network.

As for the prosecution of nongovernmental organizations, the financing of terrorism is prosecuted as complicity. Czech criminal law does not yet acknowledge the liability of legal persons for the committing of crimes (including the financing of terrorism); therefore offenders must be prosecuted as natural persons (individuals). This situation should be resolved by a bill on the criminal liability of legal persons and proceedings against legal persons, which the Czech government is currently discussing. Under this bill, it will be possible to prosecute legal persons as accomplices in relation to crimes committed by other legal persons or natural persons. The Czech government is also discussing the bill of a new Criminal Code, which views the financial, material, or other support of terrorism as a specific crime subject to the same sanctions as terrorist attacks.

1.4. In connection with the suppression of the financing of terrorism under paragraph 1(a) of the Resolution, CTC would welcome information about whether the Financial Analytical Unit of the Ministry of Finance of the Czech Republic has sufficient resources (human, financial, and technical) to fulfil its mission. Please document your reply with the relevant information.

At present, the Financial Analytical Unit is only authorized to investigate transactions where money laundering is suspected, because as yet an amendment to Act No 61/1996 has not been passed which obligates entities to report suspicious transactions related not only to money laundering, but also to the financing of terrorism (see 1.8).

The Department has been assigned 27 systemized positions (members of staff) and has the technology required to carry out present tasks.

1.5. In connection with the implementation of paragraph 1(c) of the Resolution, the Czech Republic is kindly asked to provide statistics reporting the volume of assets frozen, seized, or confiscated in relation to the financing of terrorism. The Czech Republic is also kindly asked to provide information about the numbers of natural and legal persons on lists provided:

- **by the Security Council;**
- **by the Czech Republic;**
- **by other countries or international organizations.**

The statistical methodology applied by the Ministry of Justice does not make it possible to identify the overall number of various types of property sanctions or assets seized under the Code of Criminal Procedure. In addition, the Criminal Code provides for the imposition of pecuniary punishments, the punishment of forfeiting property, and the punishment of forfeiting an item. In 2003, for example, pecuniary punishments were imposed on 42 offenders for certain crimes under which terrorist behaviour might be included (see original reply, paragraph 2(a)).

The Ministry of the Interior states that so far no assets have been frozen, seized, or confiscated in connection with the financing of terrorism in the Czech Republic in any action coordinated by the Ministry.

1.6. Under paragraph 1(a) of the Resolution and Article 18 of the International Convention for the Suppression of the Financing of Terrorism, financial institutions and other intermediaries are obliged to ascertain the identity of their clients and report suspicious financial transactions to the competent authorities. In this respect, the Czech Republic is asked to provide information about the number of reports of suspicious transactions received by the Financial Analytical Unit of the Ministry of Finance, the number of reports analyzed and disseminated, and the number of reports leading to an investigation, prosecution, or conviction.

Because an amendment to Act No 61/1996 has not yet been passed, reports on transactions where there is a suspicion of the financing of terrorism are not and cannot be delivered to the Financial Analytical Unit, nor can this department investigate such reports.

1.7. Please explain the rules for ascertaining the identity of natural and legal persons who hold bank accounts or on whose behalf bank accounts are kept (i.e. 'real account holders'); persons benefiting from transactions concluded by professional intermediaries; and any natural or legal persons with a link to a certain financial transaction. Is there any obligation for clients operating entrusted funds to prove their identity for the purpose of ascertaining information about the administrators, transferors, assignors, and beneficiaries of funds? Please give brief characteristics of current procedures enabling foreign investigative, prosecuting, and adjudicating bodies or other anti-terrorism bodies to acquire information of this nature in cases where there is a suspicion of terrorist activity.

Entities who are obliged to report suspicious transactions identify the parties to the transaction. The provisions on the discharge of this obligation are proposed as follows in the amendment:
'Identification' shall mean:

a) in the case of a natural person, the ascertainment of the person's first name and surname, or all first names and surnames, the birth registration number or date of birth, sex, place of permanent or other residence, validation of such particulars from an identity card if such particulars are contained therein, validation of the person's appearance with the photograph in the identity card, and validation of the number and validity of the identity card and of the body or state issuing the card; in the case of a natural person who carries on business

activities, the ascertainment of this person's business name, the distinguishing addendum or other similar specification, and registration number;

b) in the case of a legal person, the ascertainment of the business name, including the distinguishing addendum or other similar specification, the registered office, registration number or similar number assigned in another country, the name, or all first names and surnames, birth registration number or date of birth, and place of permanent or other residence of persons who are the statutory body thereof or a member of the statutory body thereof, the ascertainment of the majority shareholder or controlling party, and the identity of the natural person acting in the legal person's name in a given transaction; if the statutory body or a member thereof is a legal person, the ascertainment of this legal person's business name, including the distinguishing addendum or other similar specification, the registered office, registration number or similar number assigned in another country, and the ascertainment of the identification information concerning persons who are the statutory body or a member of the statutory body of this legal person.

The legislation of the Czech Republic does not regulate the existence and functioning of trusts, which do not occur in the Czech Republic.

The International Police Cooperation Department of the Police Presidium of the Czech Republic is responsible for implementing procedures when requests are received for international cooperation in the field of investigations, as yet there are no special regulations for terrorism.

Following the Czech Republic's accession to the EU (1 May 2004), the specialized anti-terrorism police unit (Unit for the Detention of Organized Crime of the Service of Criminal Service and Investigation) will be connected to the Bureau de Liaison network, which will link it to counterparts in EU Member States. Certain requests for immediate cooperation, regarding the provision of information, will be transmitted via this network (see 1.3).

1.8. CTC would also welcome news about the progress achieved in the process of recodifying criminal law in the Czech Republic. CTC would welcome a report on the progress achieved in the process of ratifying, and implementing in Czech national law, the 12 international conventions and protocols connected with terrorism.

Amendment to Act No 61/1996, which will make it possible for transactions suspected of being used for the financing of terrorism to be investigated by the Financial Analytical Unit, is being discussed by the Chamber of Deputies of the Parliament of the Czech Republic. It is expected that this amendment to the Act will enter into effect on 1 May 2004.

The Czech government is discussing a **new Criminal Code and an Act on the Criminal Liability of Legal Persons**. These bills should establish new specific bodies of crimes concerning terrorist attacks, including the financial, material, or other support of such an attack, and the liability of legal persons for such a crime.

Because we expect that the discussion of the new Criminal Code and the Act on the Criminal Liability of Legal Persons, together with significant elements of national law, will require time, the Ministry of Justice has prepared a partial amendment to the current criminal law which introduces the specific body of the crime of terrorist attacks, including the financial, material, or other support of such an attack. The Chamber of Deputies of the Parliament of the Czech Republic is currently discussing this bill.

The process of ratifying the 12 international conventions and protocols connected with terrorism

On 7 January 2004, under Government Resolution No 27 the Czech government approved the proposal for the accession of the Czech Republic to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. This proposal will be presented to the Parliament of the Czech Republic and the President of the Republic for approval. The fulfilment of the national requirements necessary for the ratification of the corresponding contractual instruments connected with the suppression of terrorism is one of the basic goals of the new Criminal Code and the Act on the Criminal Liability of Legal Persons (see above).

Effectiveness of counter-terrorism mechanisms

1.9. For the effective implementation of laws connected with all aspects of Resolution 1373, states must have an effective and coordinated mechanism and create and apply the corresponding national and international strategies to combat terrorism. In this respect, CTC would welcome information about whether the Czech Republic's National Action Plan to Combat Terrorism covers the following forms and aspects of counter-terrorism activity:

- **criminal investigation and prosecution;**
- **counter-terrorism intelligence operations (persons and technology);**
- **operations by special units;**
- **the physical protection of potential targets of terrorist attacks;**
- **strategic analysis and forecasting of threats;**
- **analysis of the effectiveness of legal regulations intended to combat terrorism, and the corresponding amendments;**
- **border and immigration control: inspections aimed at preventing trafficking in drugs, arms,**
- **biological and chemical weapons or the precursors thereof, and unlawful use of radioactive substances.**

Could the Czech Republic briefly characterize the corresponding provisions and administrative procedures?

The National Action Plan, at least in the evaluation stage, has covered all the mentioned areas to a certain degree, and will continue to deal with them in its updates, with the exception of the explicit mention of drugs.

criminal investigation and prosecution
The completion of the recodifying of the Criminal Code, expected to enter into force on 1 January 2005, is a precondition for the more effective prosecution of terrorism.

counter-terrorism intelligence operations (persons and technology) and operations by special units
In particular, the National Action Plan covers the organizational and technical part of this issue (the interconnection of the databases of operative units at home and abroad) and the issue of training anti-terrorism units (including with foreign participation).

the physical protection of potential targets of terrorist attacks
Besides specific plans for the protection of military premises (Ministry of Defence) and airports, which is mentioned in the document entitled 'National Action Plan to Combat Terrorism', with regard to the specific situation and nature of the potential threat, measures are assessed and implemented to guard other premises (the embassies of specific countries, locations where there is a high incidence of persons, infrastructure targets, etc.).

strategic analysis and threat forecasting
The Ministry of the Interior, Ministry of Defence, Ministry of Foreign Affairs, Ministry of Health, and Ministry of Agriculture are involved in the strategic analysis and forecasting of threats. The aim is to analyze the internal and external security situation of the Czech Republic, identify risk factors, and formulate the policy priorities related to internal policy and public safety. Interconnected strategic governmental and departmental documents are prepared and these strategies are processed into organizational and legislative measures.

Before the National Action Plan to Combat Terrorism was drawn up, a secret document was produced in 2000 (called 'Study of the Preparedness of the Czech Republic to Solve the Threat of Terrorist Attacks'), which was the first material devoted to the issue of strategic analysis at interdepartmental level. Other secret documents were produced for the requirements of the Central Emergency Team and the National Security Council at the time the crises in Afghanistan and Iraq culminated. The Clearing House working group also handles such conceived analysis to a certain degree.

analysis of the effectiveness of legal regulations intended to combat terrorism, and the corresponding amendments
At issue here is the recodification process related to the Criminal Code and Act No 61/1996, on money laundering.

border and immigration control: inspections aimed at preventing trafficking in drugs, arms, biological and chemical weapons or the precursors thereof, and unlawful use of radioactive substances

There are a large number of organizational and technical measures in this area responding to current legislative developments connected with the Czech Republic's accession to the Schengen System.

In order to ensure the protection of state borders in accordance with Schengen requirements, the organizational structure of the Service of the Alien and Border Police was changed with effect as of 1 January 2002, and a special unit of the Police of the Czech Republic was created to fulfil tasks nationwide related to the protection of state borders and the residence of foreigners in the country. This unit is also the only entity responsible for coordination with the border protection authorities of neighbouring countries and EU Member States in the sphere of direct activities connected with border protection.

Service of the Alien and Border Police conducts checks of persons entering and leaving the Czech Republic, including checks of the authenticity of their travel documents and of requirements for entry to the Czech Republic. At border crossings, persons and motor vehicles are screened in all police records. At border crossings, joint measures are conducted with the customs and police authorities of neighbouring countries. The customs authority checks vehicles as they cross the state borders.

Government Bill No 216/2002, on the protection of the state borders of the Czech Republic and on an amendment to certain laws, was drawn up and subsequently passed with the aim of creating legislative conditions to safeguard the protection of state borders in accordance with Schengen requirements. This Act entered into effect on 1 January 2003 (with the exception of provisions where effect is tied to the discontinuance of controls at internal borders, i.e. to the accession of the Czech Republic to the Schengen System).

Since July 2000, the Ministry of the Interior has operated a system for the central personification of machine-readable documents issued by the Czech Republic. The product of this system is machine-readable passports and identity cards carrying a printed photograph of the holder and a printed form of the holder's signature. According to available information, no counterfeit or adjusted machine-readable passports of the 'Specimen 2000' type have been intercepted. The machine-readability of both the above-mentioned documents will make the control procedure at border crossings faster and more reliable.

In connection with the preparations for the Czech Republic's membership of the EU, preparatory work has started on organizing the application of the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Union (the Dublin Convention) from 1990 and Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac', as a means of ascertaining the identity of asylum seekers and persons detained in connection with unauthorized crossing of the EU's external borders, or borders between individual Member States of the EU.

This issue is handled in the scope of preparations to incorporate the Foreign and Border Police Force into the international system of Schengen cooperation. The 'Eurodac CR' centre currently being set up has become affiliated to the already established AFIS information system (currently being expanded), which is used by the Police of the Czech Republic for the purposes of criminal proceedings and the control of legal and illegal migration. This system's standardized software product meets the requirement of compatibility with the systems already in use in EU Member States.

Most of the police information systems in the Czech Republic which keep records of items in accordance with the Implementing Convention to the Schengen Agreement are operated as a national central police database with access via the Internet and are in either permanent or trial operation.

Detectors of radioactive materials and sources of ionizing radiation are installed at selected road and railway border crossings (especially where the similar facilities of a neighbouring state cannot be used).

1.10. CTC would welcome information about the counter-terrorism activities of the Czech Republic, including the characteristics of specifically targeted programmes, the authorities which contribute to them, and about any mechanism intended to safeguard interdepartmental coordination in the individual areas specified in paragraphs 2 and 3 of the Resolution. CTC is interested in the following areas in particular:

a) recruitment to terrorist groups;

b) links between crime (especially drugs trafficking) and terrorism;

c) prevention of the establishment of safe havens for terrorists and other forms of passive or active support for terrorists or terrorist groups. This category includes the logistical support of terrorism (including the use of computer technology), 'apologies' for terrorism and incitement to terrorism, the establishment of mutual contacts between such organizations, groups, and individuals; the need to prevent terrorists and terrorist groups, by all necessary means, from having access to chemical, biological, and nuclear materials.

a) Criminal Code), etc. An attempt at a crime is punishable, and the mere preparation for a crime is punishable in the case of serious crimes.

b) Individuals involved in drugs trafficking could be connected with various terrorist movements. The yields from the above-mentioned crime could then be intended and used for the support of these movements throughout the world. However, more explicitly, there is a link here to attempts at trafficking in arms or hazardous substances. In November 2003, approximately 3 kg of radioactive substances were seized and subjected to a detailed analysis by the State Office for Nuclear Safety; the International Agency for Atomic Energy, based in Vienna, was informed of this case.

c) Between September 2001 and the present, cases have been recorded in the Czech Republic of verbal, printed, and Internet-posted apologies for terrorism, which have usually been

associated with extremist groups (the extreme left wing and extreme right wing, the extremist views of citizens from Islamic countries who live in the Czech Republic). In some cases, these incidents have been examined to determine whether a crime has been committed under Section 164 of the Criminal Code (incitement) or Section 165 (advocating a crime). In none of these cases has anyone been convicted of a terrorism-related crime.

1.11. The Czech Republic's first report in response to paragraph 2(b) (on page 8) states that the fight against terrorism is in the competence of the Police of the Czech Republic and the Security Information Service. CTC would welcome information about the method used to coordinate the work of bodies tasked with the implementation of Resolution provisions.

Under the law, the fight against terrorism is in the competence of the Police of the Czech Republic and the Security Information Service; all departments and certain other central institutions of state administration, who are set tasks in this respect in the framework of the National Action Plan to Combat Terrorism, contribute in various ways.

The government is responsible for, and coordinates, the activities of the intelligence services (see Act 153/1994, on intelligence services). The director of the Security Information Service is held accountable to the government; the director of the Office for Foreign Relations and Information is responsible to the Minister of the Interior, and the chief of Military Intelligence is liable to the Minister of Defence. The intelligence services submit an annual report on their activities to the President and the government. The intelligence services submit urgent information immediately to the Police of the Czech Republic, and to other state authorities depending on the nature of the report and the competence of the state authority.

The intelligence services cooperate at a national level and with their foreign counterparts in accordance with agreements concluded with the approval of the Czech government.

1.12. Paragraph 2(e) of the Resolution requires that each Member State have inter alia effective police, intelligence, and/or other structures at its disposal and adequate legal regulations for the purposes of detecting, monitoring, and detaining persons involved in terrorist activities and persons supporting terrorist activities, and therefore each Member State should be able to ensure that these persons will be tried in a court of law. Are there any special courses in the Czech Republic (regular or occasional) for investigators, police officers, state prosecutors, and other workers specializing in the detection and prosecution of terrorists or terrorist organizations? If so, please provide CTC with a brief description.

Besides the above-mentioned module currently being prepared (see Question 1.1), from an international aspect we can mention the participation of experts from the Ministry of the Interior in the PHARE project, module 08 – consulting, training, and assumption of experiences from units for the '**confiscation**' of revenues from crime in Germany (Dresden, Stuttgart).

Police fast-deployment units (the Rapid Response Unit) regularly attend training in the Czech Republic, with participation from foreign counterparts.

In this respect, we also note the first and second workshops on the financing of terrorism, held by the European Union on 27 November 2002 and 7 November 2003 in Brussels, which were attended by representatives of special units of the Police of the Czech Republic.

In 1999 and 2000, there were also a number of training sessions in the USA, where experts from the Czech Republic received training in monitoring, handling explosives, and crisis management.

1.13. In connection with the effective implementation of paragraph 2(e), please state what special techniques can be used in the Czech Republic during investigations into terrorism, (e.g. checks on communications, electronic surveillance, observance, covert operations; checks of supplies, 'pseudo purchases' and other 'pseudo crime'; anonymous informers, tracking across borders, bugging in private or public areas, etc.). Please explain the principle of these techniques and legal conditions for the use thereof. CTC is interested in whether these techniques can be applied only in relation to suspects, whether they can be used only with the approval of a court, or whether is any time restriction connected to their use, etc. Could the Czech Republic explain how these techniques can be used in cooperation with another country?

The issue of 'special techniques of investigation' during criminal investigations, including terrorism, is covered by **Act No 283/1991, on the Police of the Czech Republic**, Section 23 et seq. (Section 23 – authorization to use explosives and explosive devices; Section 23a – authorization to use support intelligence means and devices; Section 23b – undercover identity; Section 23c – conspiratorial means; Section 23d – alarm devices; Section 23e – special funds; Section 23f – informers) and the **Code of Criminal Procedure**, Section 86 et seq. (Section 86 – seizure of shipment; Section 87 – opening of shipment; Section 87a – substitution of shipment; Section 87b – controlled delivery).

However, the institutions mentioned above are rarely used in connection with the fight against potential terrorism (in 2002, for example, the technique of tracing a shipment in the fight against terrorism was used once, and not at all in 2003); they are used much more frequently in the fright against drugs-related crime (dozens of cases every year).

In order to obtain facts important for criminal proceedings, the following **intelligence means and devices** can be used for the purposes of trials, provided that there was no other means of achieving the pursued aim or provided that achieving this aim would otherwise be severely hampered:

a) **feigned transfer of a thing** (Section 158c of the Code of Criminal Procedure) – a purchase, sale, or other method of transferring a subject of fulfilment may be simulated. The written permission of the public prosecutor is required for a sham transfer. In urgent cases, the police authority can apply for permission subsequently; if it does not receive permission within 48 hours, it terminates the sham transfer and is not allowed to use any information

thus obtained. A record of each sham transfer must be delivered to the public prosecutor within 48 hours.

b) **surveillance of persons and items** (Section 158d of the Code of Criminal Procedure) – this technique involves the acquisition of observations about persons and items by covert technological or other means. If audio, visual, or other records are to be made during surveillance, permission from the public prosecutor is required. In urgent cases, the police authority can apply for permission subsequently; if it does not receive permission within 48 hours, it terminates the surveillance, destroys records, and is not allowed to use any information thus obtained. If the inviolability of a private property or mail secrets is affected by surveillance, or if the content of other written documents and records stored on a private property is ascertained by technological means, advance permission from a court is required. The permission of the public prosecutor or a court is granted for a maximum of six months; this permission may be renewed repeatedly, for a maximum of six months in each case. In addition, surveillance may also be used if the person whose rights and freedoms are to be affected by the surveillance agrees to the use of such surveillance. The operators of telecommunications and their employees, the post office, or the person responsible for transporting consignments must provide the necessary cooperation to the police authority and respect the police authority's instructions during surveillance activities; this cooperation must be provided free of charge.

c) **use of an agent** (Section 158e of the Code of Criminal Procedure) – this technique is restricted to proceedings involving particularly serious crimes, crimes committed for the benefit of criminal conspiracy, or other crimes that the Czech Republic is bound to prosecute under an international treaty (including crimes involving terrorism as specified in the first reply under 2(a)A and B). An agent is a police officer who carries out the tasks imposed on him by a managing authority, and as a matter of principle acts in a manner concealing the true purpose of his activities. For the activities of an agent, a different personal existence can be create, separate economic activities can be carried out, and his employment as a police officer can be concealed. The use of an agent is permitted by a judge of the competent high court, based on an application from a public prosecutor from the General Prosecutor's Office. The duration for which the permission is granted may be renewed repeatedly. An agent does not need permission for the surveillance of persons and items, even if audio, visual, or other records are to be made during this surveillance. The public prosecutor conducts regular inspections of whether the reasons for the use of an agent still exist.

In addition, other procedures may be applied in accordance with the terms and conditions laid down in the Code of Criminal Procedure:

- the surrendering or removal of an item (Sections 78 and 79 of the Code of Criminal Procedure);
- personal or house searches, and searches of other premises (Sections 82 to 85a of the Code of Criminal Procedure);

- the seizure, opening, replacement, and surveillance of consignments (Sections 86 to 87c) of the Code of Criminal Procedure).

It is also possible to use the **bugging and recording of telecommunication operations** in accordance with Sections 88 and 88a of the Code of Criminal Procedure provided that criminal proceedings are being conducted for a particularly serious premeditated crime or for another premeditated crime that the Czech Republic is bound to prosecute under an international treaty (including crimes involving terrorism as specified in the first reply under 2(a)A and B). It is possible to bug and record telecommunication operations (with the exception of communications between a defendant and his counsel) and to obtain further information about telecommunication operations used (e.g. personal and intermediary data). The permission of a court is required, which can be issued for a maximum of six months and may be renewed repeatedly. If the user of the relevant telecommunication equipment agrees, the bugging and recording of telecommunication operations and the gathering of data on such operations can be carried out at any time. If circumstances not significant for criminal proceedings are discovered during bugging, these records must be destroyed in the prescribed manner.

Cooperation between the investigators of various countries regarding the tracking of a consignment is carried out directly in accordance with bilateral agreements; if these agreements do not exist, cooperation is established via the Ministry of Justice based on agreements on legal assistance (e.g. the weapons section of the Unit for the Detention of Organized Crime of the Service of Criminal Service and Investigation was involved in the international tracking of a consignment once this year, but not at all last year; the National Narcotics Headquarters makes use of this technique dozens of times every year). An amendment to the Code of Criminal Procedure, effective as of 1 January 2002, which introduced the institution of consignment tracking into the criminal process, has simplified the whole procedure considerably.

The explicit regulation of international elements is contained in Section 87b(4) (monitored consignments) and in Section 158e(8) (the use of an agent) of the Code of Criminal Procedure and in Sections 48b and 48c of Act No 283/1991, on the Police of the Czech Republic.

At present, it is possible to make such requests mainly in accordance with the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (Strasbourg, 8 November 1990) or in accordance with the general provisions of international agreements on legal assistance in criminal cases.

The Act on the Police of the Czech Republic (Section 48 et seq.) covers the issue of relations between the Police of the Czech Republic and other countries.

The international cooperation of the Police of the Czech Republic in the fight against terrorism focuses on European countries; of the non-European countries, most cooperation is with the USA, Israel, Canada, and Japan. The international cooperation of the Czech Republic's central institutions and the competent intelligence and security units reflects the obligations stemming from international conventions which are binding on the Czech Republic (including conventions on legal assistance) and from agreements concluded between individual security and intelligence entities. In the sphere of

international police cooperation, International Police Cooperation Department of the Police Presidium (OMPS), which was formed in 1999 and is subordinate to the Deputy Police President for Coordination and Conceptual Proceedings, plays an important role. The above-mentioned tasks within the OMPS are carried out by five separate teams: the National Headquarters of INTERPOL, the Foreign Relations Team, the Organization and Methodology Team, the EUROPOL Team, and the 'Sirene' Team.

The Czech Republic is also striving to fulfil the individual principles of the Pre-Accession Pact between Member States of the EU and candidate countries on the fight against organized crime, which was approved in 1998.

The Ministry of the Interior is responsible for coordinating the conclusion of agreements on police cooperation. Although the financing of terrorism is not directly an issue in most of these contractual documents, they could be applied to this area because they regulate the obligation of the Contracting Parties to cooperate in preventing, combating, and detecting crime and in the performance of investigative actions, including terrorism. In more recent contracts which are prepared and concluded, cooperation in fighting terrorism, including the fight against the financing of terrorism, is explicitly regulated.

The Financial Analytical Unit enters into Memoranda of Understanding with foreign partner units; these agreements set out the terms and conditions for the mutual exchange of information. So fare 13 such memoranda have been concluded.

1.14. With regard to the obligation to bring terrorists and their supporters to trial, please state whether the Czech Republic, in the scope of prosecuting terrorism-related crimes, has adopted measures to protect vulnerable targets (e.g. protection of victims, persons cooperating in the interests of justice, witnesses, judges, and public prosecutors). Please characterize the legal and administrative regulations safeguarding this protection. Could the Czech Republic provide information about whether these measures can be applied in cooperation with another country or at the request of another country?

Witness protection in relation to terrorism is not explicitly covered; this scheme is a solution which does not differentiate between different issues (although there is a distinction based on the seriousness of the risk for a specific witness).

Act No 137/2001, on the special protection of a witness and other persons in connection with criminal proceedings and on an amendment to Act No 99/1963, the Code of Civil Procedure, as amended, regulates the provision of special protection and assistance to at-risk persons in cases where their safety cannot be ensured by other means (in accordance with points 1 and 2). This law considered an 'at-risk person' to be a person who

a) has submitted or is due to submit an explanation or testimony, or who has testified or is due to testify as a defendant, or who has otherwise assisted or is due to assist in the

accomplishment of the purpose of criminal proceedings in accordance with the Code of Criminal Procedure, or

b) is an expert or interpreter or defence counsel, if the defendant whom the counsel represents has testified or is due to testify in order to help accomplish the purpose of criminal proceedings, or

c) is a 'close person' (relative) of a person specified in paragraph a) or b).

A 'protected person' is an at-risk person who is granted special protection and assistance. 'Special protection and assistance' is a set of measures including:

- personal protection,
- the relocation of a protected person, including members of his/her household, and assistance for a protected person in order to aid his/her social integration in a new environment,
- concealing the true identity of the protected person.

Special protection and assistance may be granted if:

- an at-risk person agrees with the method and conditions for the provision of special protection and assistance, including the processing and use of his/her personal data, and
- the Minister of the Interior approves a request from the police, a judge, or a public prosecutor to grant special protection and assistance to an at-risk person; judges and public prosecutors submit such requests via the Minister of Justice.

If an at-risk or protected person is a minor or a person who has been deprived of legal capacity by a court order, or whose legal capacity has been restricted by a court order, the above-mentioned consent is supplied by his/her legal guardian.

At present, the Ministry of the Interior is preparing an amendment to Act No 137/2001; the lack of legislation on international cooperation in this area also has an influence. Considering the geographical and demographic conditions of the Czech Republic, a situation can occur where a protected person needs to be relocated outside the Czech Republic in order to ensure his/her safety. In this cases, it is naturally essential that immediate protection be supplied by foreign security forces directly. However, this form of cooperation requires that the Czech Republic also be capable of offering and ensuring the appropriate special protection of protected persons as a service of the Police of the Czech Republic at the request of an authority in another country.

1.15. As regards the effective implementation of paragraph 2(e), could the Czech Republic kindly provide CTC with information about the number of persons prosecuted for:

- **terrorist activities;**
- **the financing of terrorist activities;**
- **recruitment to terrorist organizations;**
- **the support of terrorists or terrorist organizations.**

How many of these persons have been prosecuted for obtaining support (including recruitment) for:

- **banned organizations and**
- **other terrorist groups and organizations?**

During the existence of the Czech Republic (i.e. 1993-2003) only two cases have been classified as fulfilling the body of a terrorism-related crime (in neither case was there an international element); in the remaining cases, the body of the crime has been different (disseminating false alerts, endangering the public, blackmail).

1.16. With regard to the effective implementation of Article 5 of the International Convention for the Suppression of the Financing of Terrorism, please state whether the Czech Republic has adopted measures aimed at appointing the civil, criminal, and administrative liability of legal persons in connection with crime, especially terrorism-related crime? Please be specific and briefly characterize the relevant legal regulations. Is it possible for legal persons to bear responsibility in cases where no natural person has been ascertained or convicted?

As mentioned in the reply to paragraphs 1.3 and 1.8, the Czech Republic is in the process of introducing the criminal liability of legal persons. This liability will also relate to crimes punishable as terrorism, especially the newly prepared crime of 'terrorist attack'. Legal persons will also be able to bear liability in cases where the identity of a specific natural person who committed an unlawful act cannot be established or in cases where no specific natural person can be held criminally liable.

The Ministry of the Interior is coordinating the preparation of a new administrative infractions act which will harmonize legislation on the administrative offences of natural and legal persons. It is expected that this law will enter into force as of 1 January 2005. However, in our point of view this is only an emergency solution to cover cases where it will be impossible to apply provisions containing the criminal liability of legal persons (which, in accordance with the recodification of the Code of Criminal Procedure and Criminal Code, is also due to enter into effect on 1 January 2005).

1.17. The Czech Republic's first report in response to paragraph 3(a) (on page 15) states that 'in the field of international technology (in particular the Internet), risk areas have been identified which will have to be dealt with'. Could the Czech Republic briefly characterize the steps which have been taken in response to this specific challenge? Could the Czech Republic inform CTC whether laws have been passed to combat cyber-crime? Does the Czech Republic intend to sign and ratify the Cyber-Crime Convention and its Additional Protocol on the criminalization of acts of a racist and xenophobic nature committed through computer systems?

The issue of confidential information is covered legislatively under Act No 148/1998.

In the framework of the Office for Public Information Systems (UVIS, now part of the Ministry of Informatics), a preparatory document has been drawn up relating to the creation and inspection of the observance of the standard of public administration information systems. This document is entitled 'Public Administration Information System Security Policy'.

As part of the PHARE twinning project 'Modernization of Central State Administration', in 2002 UVIS held – in cooperation with its Finnish partners – a seminar called 'Information Security', to which departmental directors of IT/IS divisions were invited. This seminar was preceded by a questionnaire-based survey on the management of information security at individual central institutions of state administration. It is expected that a summary study mapping out the situation in this field in the Czech Republic will be drawn up.

Security measures adopted in the Czech Republic are being compared with security measures adopted by other countries. The Ministry of Foreign Affairs has asked the Czech Republic's representations abroad to supply information about police, military, and political measures in this field, as well as information about the activation of integrated emergency systems, media strategies, and the institutional coverage of this agenda (the functioning of crisis teams etc.) in different countries of the world.

The security of information systems handling classified information is sufficiently secured in relation to the principal threats stemming from a possible terrorist attack in the Czech Republic. A special emphasis was placed on ensuring this security when the NATO Summit was held in Prague. Natural disasters and brute-force terrorist attacks remain risks. It is difficult to provide the corresponding protection against such a risk because of the high investment costs involved and the structural restrictions (the protection of listed buildings etc.). The fact that many systems do not have sufficient security documentation remains a problem.

UVIS prepared a document for the State Security Council called 'Information on the Preparation of a Conceptual Solution to Reduce and Eliminate the Consequences of the Information Struggle, and Foreign Intelligence Penetration of and Criminal Attacks on Information Systems', which was discussed in 2002.

Certain more broadly conceived documents, such as the 'Concept of Informatics at the Ministry of Labour and Social Affairs in 2001-2003', also cover these themes.

The National Security Office (in cooperation with individual ministries and other central institutions of state administration) is responsible for conducting inspections of information systems working with sensitive data of information systems used to serve vitally important systems; in particular, the National Security Office implements measures in accordance with Regulation No 56/1999, on the safeguarding of the security of information systems handling classified information, the certification thereof, and certificate requirements, which lays down the requirements for the security of information systems handling classified information, the minimum requirements in the sphere of computer security, the procedures and methods for the information system certification process, and the particulars of certificates.

During 2002, 'sensitive activities' were incorporated into Act No 148/1998, on the protection of classified information; these activities include areas not covered in the list of classified information. At present, a specific list of these 'sensitive activities' (Section 81b) is being drawn up at the individual departments.

Information systems working with sensitive data and information systems used to serve vitally important systems have been subject to an inspection of the security parameters implemented in accordance with Act No 148/1998, and an analysis focusing on the protection of these systems against terrorist attack, not only based on up-to-date lists of classified information.

The security managers of information systems handling classified information at the individual central institutions of state administration have run checks to ensure the safety of these information systems (IS) in terms of the potential threat posed by terrorist attacks. These checks centred on risks in the following principal areas of security:

- the installation security of the IS of the institution (department, authority) as a whole and of its individual centres;
- the security of IS infrastructure elements – especially network resources and backup power supply;
- the staffing of IS with regard to IS availability;
- the safety of backup media.

The handling of personal data within the framework of the Police of the Czech Republic merits special attention. Binding Instruction of the Police President No 55/2002 has been issued to regulate the uniform approach of the Police of the Czech Republic in the processing of personal data in information systems. In the scope of the Department of System Management and Informati_s of the Police Presidium of the Czech Republic, a new unit has been set up with responsibility for the protection of personal data.

The individual ministries pay constant, ongoing attention to inspections of the security of the individual public administration information systems. A similar approach is taken towards the attestation of these information systems in accordance with Act No 365/2000.

The Czech Republic intends to sign the Cyber-crime Convention and the Additional Protocol on the criminalization of acts of a racist or xenophobic nature committed through computer systems. There is a special unit within the Police of the Czech Republic which specializes in cyber crime. Other experts on this type of crime work for other departments at the Ministry of the Interior and other ministries.

Effectiveness of customs, immigration, and border control

1.18. Efficient customs, immigration, and border control, preventing the movements of terrorists and the establishment of safe havens, is required for the effective implementation of paragraphs 2(c) and 2(g) of the Resolution. The Czech Republic's first report in response to paragraph 2(b) (on page 9) states that preparations are under way to launch a national Schengen information system (NSIS) and to integrate the Czech Republic into EUROPOL. The report also states (on page 15) that there is expected to be an expansion in the current information system to 'include information systems in the field of drugs, the perpetrators of crime and extremism, and in the field of coordination, liaison, and information'. CTC would welcome news on the progress made in these processes.

Integration of the Czech Republic into Europol

On 5 March 2002, a bilateral agreement was signed between the Czech Republic and Europol. Further to this agreement, a specialist centre was set up within the Police Presidium of the Czech Republic to handle tasks required under the agreement. Since 15 September, a liaison officer of the Czech Republic has been working at Europol headquarters in The Hague.

The most important step required for the full-fledged accession of the Czech Republic to Europol is to set up a national Europol unit; this unit was created in the format 1 + 5 tabular positions by a decision of the Police President as at 1 November 2003.

In May 2004, the Czech Republic's letter of accession to the Convention on Europol and its additional protocols will be filed with the Secretary General of the Council of the European Union, which will trigger the beginning of the three-month time limit as of the first day of the month following the filing of letters of accession. Therefore the Czech Republic will become a full member of Europol on 1 September 2004 at the earliest.

A number of other steps of a staffing and organizational nature are connected with the process of the Czech Republic's accession to Europol (selection procedures for positions at Europol, the financing of the Czech Republic's Europol contribution).

Developments in the establishment of the NSIS

In accordance with an obligation stemming from the Treaty of Accession, by the date of accession to the EU (i.e. by 1 May 2004), the Czech Republic will be ready to implement Schengen acquis Category I and is interested in starting the implementation of the Schengen acquis Category II as soon as SIS become accessible for candidate countries. In accordance with the Schengen Action Plan (SAP) of the Czech Republic for 2003, the Czech Republic will be prepared for the full implementation of the Schengen acquis as at 1 January 2006. the Czech Republic would prefer the joint launch of Category II implementation with neighbouring acceding countries. However, if a joint

application were to hamper the Czech Republic once it is ready, the Czech Republic intends to submit an individual application and assume responsibility for the external Schengen border.

In order to minimize the implementation period required for the Category II acquis, the Czech Republic is interested in preparing for SIS II concurrently with Schengen Member States and in launching the evaluation process in advance so that, as at 1 January 2006, controls of persons on the borders with Germany and Austria can be discontinued (and, if possible, with Poland and Slovakia too, if they organize preparations in readiness for the same date).

The Czech Republic's 2003 SAP is feasible provided that the second-generation Schengen Information System becomes available for new Member States as at 1 January 2006 and provided that the evaluation procedure is completed sufficiently in advance. Another condition is the cooperation of neighbouring states in preparations for the discontinuance of controls on their shares borders.

The Schengen Action Plan will be updated regularly further to the conclusions drawn in the evaluation process, the results of twinning projects in the framework of the Phare programme, and with regard to any development in the Schengen acquis (especially in the sphere of SIS II).

1.19. With regard to the implementation of paragraphs 2(b) and 2(j), could the Czech Republic briefly characterize the principal provisions of its National Programme for the Protection of Civil Aviation, and amendments thereto? Which institution is responsible for the fulfilment of these provisions? How is coordination between this party's work and the work of investigative, prosecuting, and adjudicating bodies and other relevant entities ensured? Does the Czech Republic apply the standards and recommendations of ICAO (Appendix 17) and ECAC? If yes, please specify the steps taken in this respect.

The new **National Programme for the Protection of the Czech Civil Aviation** Against Unlawful Acts was discussed and approved by the State Security Council at its session held on 6 January 2004 (see State Security Council Resolution No 87). The National Security Programme for the Protection of the Civil Aviation of the Czech Republic Against Unlawful Acts is based on the National Action Plan to Combat terrorism, approved by the Czech Republic under Resolution No 361 of 14 April 2003, the documents of the international civil aviation organizations ICAO and ECAC, and Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 Establishing Common Rules in the Field of Civil Aviation Security.

The main principles of this document are as follows:
1. The National Security Programme for the Protection of the Civil Aviation of the Czech Republic Against Unlawful Acts introduces security measures and appoints processes for the protection of civil aviation applicable to international and internal operations in the Czech Republic.

2. The following entities are obliged to respect the National Security Programme for the Protection of Civil Aviation:

2.1. air carriers;

2.2. operators of aviation work, including operators of public exhibitions and public aviation competitions;

2.3. operators of flight operating services, including airport services;

2.4. operators of services during the check-in process at airports;

2.5. airport operators.

3. Travellers are obliged to respect undergo security measures, including personal searches, and to heed the guidelines and instructions required for the protection of civil aviation. Travellers who fail to respect these guidelines and instructions may be prevented from travelling or may be ejected from the airport.

4. The National Security Programme for the Protection of Civil Aviation also regulates in greater detail the competence of the individual state units and their cooperation in protecting civil aviation against unlawful acts.

The Ministry of Transport is responsible for the**. coordination and control of the implementation of the National Security Programme for the Protection of the Civil Aviation of the Czech Republic Against Unlawful Acts** The Civil Aviation Authority is responsible for ongoing and regular checks of these measures. Airport operators, air carriers, flight operating service providers, and all check-in service operators are obliged to draw up their own programmes of civil aviation protection before they can commence operations.

The Interdepartmental Committee for Civil Aviation Security was set up as a special **coordinating body**; this Committee discusses fundamental issues of cooperation in the field of protecting civil aviation against unlawful acts at level of the Ministry of Transport, the Ministry of the Interior (including the Police of the Czech Republic), the Ministry of Defence, the Ministry of Foreign Affairs, and the Ministry of Finance (customs authority). At the level of airport operators, the airport security committee plays the role of the coordinating body; representatives of the area authorities of the Police of the Czech Republic and customs authority sit on this committee.

Standards and recommendations of ICAO and ECAC

The International Civil Aviation Convention, signed in Chicago on 7 December 1944 (hereinafter referred to as the 'Chicago Convention') has been valid in the Czech Republic since 4 April 1947 and was promulgated in the Collection of Laws under No 147/1947. The latest (seventh) updated edition of Annex 17 to the Chicago Convention has been in force since 1 July 2002 and was published as Air Regulation L 17. The binding nature of this regulation on airport operators and air operations is laid down in Act No 49/1997, on civil aviation.

The protection of civil aviation against unlawful acts is regulated in the Civil Aviation Act (which is currently being revised, and an amendment is being prepared)

Airport operators, air carriers, flight operating service providers, and all check-in service operators are obliged to draw up their own programmes of civil aviation protection before they can commence operations; these programmes must comply with:

a) Annex 17 to the Convention on International Civil Aviation, issued by the International Civil Aviation Organization, Edition Seven – April 2002

b) Recommendation of the European Civil Aviation Conference ECAC Doc. No 30, Part II – Security, Edition Eleven – July 2003

c) The requirements of Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 Establishing Common Rules in the Field of Civil Aviation Security

Programmes for the protection of civil aviation against unlawful acts are assessed and approved for the individual airport operators and operators of air activities by the Civil Aviation Authority after discussion with the Police of the Czech Republic and locally competent customs authority bodies. The approval of a civil aviation protection programme is one of the conditions for the issue of a licence.

The effectiveness of controls to prevent terrorists' access to weapons

1.20. Paragraph 2(a) of the Resolution requires that each Member State inter alia have the relevant mechanism to prevent terrorists from having access to weapons. In connection with this requirement contained in the Resolution, and in connection with the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Bombings, please provide CTV with information on the following issues:

A) Laws, legislative instruments, administrative procedures:

What are the national measures to prevent the production, amassing, transfer, and possession of unmarked or insufficiently marked:

handheld and light firearms
other firearms, the parts and components thereof, and ammunition therefor
plastic explosives
other explosives and their precursors

B) Inspections of exports:

Please describe the system for permitting imports and exports and measures concerning the transit of goods applied in the Czech Republic in cases of the transportation of:

handheld and light firearms
other firearms, the parts and components thereof, and ammunition therefor
plastic explosives
other explosives and their precursors

Please describe the processes for the inspection of exports and current mechanisms for the exchange of information about the sources, routes, and methods of arms dealing.

Is the submission, recording, and inspection of declarations and related documentation concerning firearms required prior to the importation or transit of goods; is there an obligation to ask importers, exporters, or third parties to supply information to customs authorities before such transportation? Please characterize the relevant mechanism for validating the authenticity of licences or authorizations for the import, export, or transit of firearms.

Does the Czech Republic's customs authority apply risk management procedures at borders based on intelligence information in order to detect high-risk goods? Please specify the information required by customs authorities in order to detect high-risk consignments prior to transportation. Are there any special security measures applicable to the import, export, and transit of firearms, e.g. security inspections of their temporary storage points, warehouses, and vehicles transporting firearms, and is there any requirement for the security screening of persons involved in this activity? If yes, please give details.

C) Intermediaries

What national legislative and administrative procedures regulate the activities of persons involved in the intermediation of firearms and explosives in fields subject to national jurisdiction and control? Describe the relevant processes for keeping records of intermediaries, and the licensing and permitting of intermediary transactions.

Do legal regulations in force require that the names and places of businesses of intermediaries involved in a transaction be specified on import and export licences and permits, or on documents concerning imports and exports which have been made?

Do legal regulations in force allow for the sharing of relevant information with foreign partners for the purposes of cooperation during the prevention of illegal supplies of firearms, parts and components thereof, and ammunition for firearms, and explosives and their precursors?

D) Exercising the law/trafficking:

What special measures does the Czech Republic use to prevent and suppress trafficking in firearms, ammunition, and explosives used by terrorists?

Issues concerning weapons, ammunition, and explosives:

The principal provisions regulating weapons and ammunition are:

- Act No 119/2002, **on firearms and ammunition** and on an amendment to Act No 156/2000, on the validation of firearms, ammunition, and pyrotechnical items and on an amendment to Act No 288/1995, on firearms and ammunition (the Firearms Act), in the wording of Act No 13/1998 and Act No 368/1992, on administrative fees, as amended, and Act No 455/991, the Trade Licensing Act, as amended (the Firearms Act), in the wording of Act No 320/2002, Act No 227/2003, and Act No 228/2003;

- Act No 156/2000, **on the validation of firearms, ammunition, and pyrotechnical items** and on an amendment to Act No 288/1995, on firearms and ammunition (the Firearms Act), in the wording of Act No 13/1998 and Act No 368/1992, on administrative fees, as amended;

- Act No 61/1988, **on mining activities, explosives, and on the State Mining Authority**, as amended;

- Act No 455/1991, **on trade licensing** (the Trade Licensing Act), as amended;

- Act No 38/1994, **on foreign trade in military materials** and on an amendment to Act No 455/1991, on trade licensing (the Trade Licensing Act), as amended, and Act No 140/1961, the Criminal Code, as amended;

- Act No 42/1980, **on economic relations with other countries**, as amended;

- Act No 62/2000, **on certain measures in the export or import of products and on licensing proceedings**, and on an amendment to certain laws.

The Firearms Act, which entered into effect on 1 January 2003, regulates inter alia the category of firearms and ammunition, conditions for the ownership, possession, carrying and use of weapons or ammunition, the rights and duties of the holders of weapons or ammunition, conditions for the export, import, or transit of weapons or ammunition, and the operation of information systems in the field of weapons and ammunition. The new legislation has adapted Czech law in the field of firearms and ammunition to EU legislation.

The new Firearms Act introduced (in accordance with Directive 91/477/EEC) the following new categories of weapons in particular: Category A – prohibited firearms, prohibited ammunition, and prohibited weapon accessories, Category B – firearms subject to authorization, Category C – firearms subject to declaration, and Category D – other firearms. As the new categorization was introduced, there was an amendment to the acquisition and possession of weapons and ammunition for each category. The basic document for the acquisition, possession, and carrying of firearms in Categories A to C for private individuals is a firearms certificate. The basic document for the acquisition and possession of firearms in Categories A to C for business or other activities is a firearms licence.

The Firearms Act established the institution of the 'European weapons passport', which, after the accession of the Czech Republic to the European Union, will enable the holder to travel with a weapon or weapons throughout the European Union. Provisions on the European weapons passport will enter into effect on the date of the Czech Republic's accession to the European Union.

Individual imports, exports, or transit of weapons or ammunition are regulated in Sections 44-49 and Section 51 of the Firearms Act. Under these provisions, weapons shipping certificates are issued for permanent imports, exports, or transit of Category A-C weapons or the ammunition required for these weapons; weapons shipping certificates are issued by the Police of the Czech Republic and Embassies – the conditions of issue are laid down in the individual provisions of the Firearms Act).

Under the new Firearms Act, the embassies of the Czech Republic issue weapons shipping certificates for the permanent import of weapons or ammunition and weapons shipping certificates for the transit of weapons or ammunition. The issuance of these documents is regulated by Sections 44, 45, 46, and 51 of the Firearms Act.

The import of weapons and ammunition is regulated by Sections 45 and 51 of the Firearms Act.

According to Section 45, the relevant police department or, in other countries, the relevant embassy of the Czech Republic is responsible for issuing weapons shipping certificates for the permanent import of weapons or ammunitions. Embassies of the Czech Republic mainly issue weapons shipping certificates for the permanent import of weapons or ammunition to foreigners who want to import weapons or ammunition to the Czech Republic. However, they may also issue weapons shipping certificates for permanent imports to a natural or legal person who holds a weapons passport or a weapons licence, although these cases are likely to be isolated. For example, the holder of a weapons certificate or weapons licence abroad may plan to purchase a weapon or ammunition without having planned to purchase these items before making a trip abroad, or may receive a weapon or ammunition as a gift in another country. However, in most cases weapons shipping certificates for the permanent import of weapons or ammunition will mainly be issued to the holders of weapons certificates or weapons licences by the competent police department on the territory of the Czech Republic.

The transit of weapons and ammunition is regulated by Sections 46, 50, and 51 of the Firearms Act.

According to the provisions of Section 46 of the Firearms Act, an embassy of the Czech Republic issues natural or legal persons who wish to transit weapons or ammunition with weapons shipping

certificates for the transit of weapons or ammunition. In cases laid down by law (for the purposes of exercising hunting rights, taking part in sports shooting competitions, or for holders of a European weapons passport), a weapons shipping certificate for the transit of a weapon or ammunition may be issued by the police department at the border crossing. Weapons shipping certificates for transit are issued in particular to persons who do not have a place of residence or a registered office on the territory of the Czech Republic.

Under Section 44 of the Firearms Act, the competent police department issues weapons shipping certificates for the permanent export of weapons of ammunition to natural persons – holders of a weapons certificate, legal persons – holders of a weapons licence, or foreigners for the permanent export of weapons or ammunition.

A specimen of the application for the issue of a weapons shipping certificate is given in Annex No 14 to Regulation No 384/2002, on the implementation of certain provisions of the Firearms Act. A specimen of a weapons shipping certificate is given in Annex No 5 to Regulation No 384/2002. An application for the issue of a weapons shipping certificate for the permanent import of weapons or ammunition and an application for the issue of a weapons shipping certificate for the transit of weapons or ammunition is regulated by a single form; the same applies to a weapons shipping certificate for the permanent import of weapons or ammunition and a weapons shipping certificate for the transit of weapons or ammunition.

A new and very important obligation of embassies prior to the issue of a weapons shipping certificate is regulated under Section 51(5), requiring them to inspect the conditions under which the transit of weapons or ammunition is to occur, with consideration for the security of the weapon.

Act No 71/1967, on administrative proceedings (Administrative Rules), as amended, applies to the proceedings for the issue of a weapons shipping certificate. In this respect, it is possible for an embassy to require further documentation needed for a decision on an application. In particular, this documentation might include additional information in the application about the conditions for the security of weapons on the territory of the Czech Republic. In cases of doubt in specific cases, the headquarters of the police force's administrative service division can provide assistance.

The issue of weapons shipping certificates for permanent imports or for the transit of weapons and ammunition does not relate to permanent imports or the transit of weapons or ammunition carried out by a natural person or legal person in the scope of their business activities under a separate legal regulation, i.e. laws regulating foreign trade in military material (Act No 38/1994), economic relations abroad (Act No 42/1980), and measures for the export and import of products and on licensing proceedings (Act No 62/2000) – Section 51(4). In these cases, only a permit for the transportation of weapons or ammunition is required (see Section 50). However, a permit for transportation cannot be issued to natural persons or legal persons who are not entrepreneurs under the legislation of the Czech Republic (e.g. they are not authorized to carry on a business in accordance with the Trade Licensing Act, they do not have a place of residence or a registered office on the territory of the Czech Republic).

In connection with the control of movements of weapons and ammunitions across state borders, and in particular over the Member States of the European Union, the Firearms Act, in accordance with EC Council Directives, has established the new institution of permitting the transportation of weapons and ammunition. A permit for the transportation of weapons and ammunition is only issued to entrepreneurs in the field of weapons and ammunition, either as a one-off permit for a single transportation or as a long-term permit (of up to three years) for an unlimited number of individual transportations (Section 50 of the Firearms Act).

An entrepreneur with Category A, B, or C firearms or ammunition for these weapons (Section 2(2)(d)) may transport weapons or ammunition intended for export, import, or transit only in accordance with a permit for transportation. The competent police department issues a transportation permit based on an application. An applicant for a transportation permit must present a permit or licence from the Ministry of Industry and Trade for the export or import thereof together with the application.

The provisions regulating the permanent import or transit of weapons or ammunition over Czech territory therefore indicate that natural or legal persons who are not entrepreneurs as set forth in Section 2(2) of the Weapons Act (i.e. who are not authorized to do business in accordance with the Trade Licensing Act, or do not have a weapons licence in accordance with the Weapons Act) is issued, for the permanent import or transit of weapons or ammunition, with a weapons shipping certificate for the permanent import or transit of weapons or ammunition by an embassy (except in the cases specified in the law, e.g. for hunting or sports purposes).

Under the law, a permit for the transportation of weapons or ammunition is only issued to entrepreneurs doing business in weapons and ammunitions in accordance with the Firearms Act (they are authorized to do business in accordance with the Trade Licensing Act, or have a weapons licence in accordance with the Firearms Act); however, a weapons shipping certificate is not issued to these persons if the export, import, or transit of weapons or ammunition is carried out in the scope of business activities in accordance with a separate legal regulation (e.g. Act No 38/1994, Act No 42/1980, Act No 62/2000). Therefore, a transportation permit for the transit of weapons or ammunition may be issued to entrepreneurs doing business in weapons and ammunition only if they carry out the transit of weapons or ammunition across the territory of the Czech Republic in the scope of their business activities (e.g. from Slovakia to Germany).

Summary regarding the permanent import or transit of weapons or ammunition over the territory of the Czech Republic:

Natural or legal persons who are not entrepreneurs in the field of weapons and ammunition in accordance with Section 2(2)(d) of the Firearms Act (these may be inter alia foreign entrepreneurs who do not carry on business activities on the territory of the Czech Republic in accordance with Czech regulations) are issued, for the transit of weapons or ammunition across the territory of the Czech Republic, with a weapons shipping certificate for the transit of weapons or ammunition by an embassy of the Czech Republic in accordance with Section 46 of the Firearms Act.

The competent police department issues a transportation permit, in accordance with Section 50 of the Firearms Act, for the transit of weapons or ammunition over the territory of the Czech Republic to entrepreneurs doing business with Category A, B, or C weapons or the ammunition for these weapons, provided that these entrepreneurs do business in the relevant weapons or ammunition in accordance with the legislation of the Czech Republic.

Under Section 51(2), any person who exports, imports, or arranges the transit of Category A, B, or C weapons or ammunition for these weapons over state borders of the Czech Republic, is obliged to notify this fact to the police and the customs authority on the border crossing of the Czech Republic; this does not apply to exports or imports made via consignments. At the same time, this person is obliged to present the permits under Sections 44, 45 or Sections 46 and 50, or a European weapons passport. This person must always have a permit or European weapons passport on his/her person provided that he/she is carrying a Category A, B, or C weapon or ammunition for such a weapon, this permit or passport must be presented to the relevant body for inspection.

Under Section 51(3), any person who exports and re-imports a Category A, B, or C weapon or ammunition for such a weapon is obliged to report to the competent police department, at least five working days before the date of estimated export,

a) the personal details and number of the travel document of the person conducting the transportation,
b) the address of the destination to which the Category A, B, or C weapons or ammunition for such weapons are to be delivered,
c) information about the Category A, B, or C weapons or ammunition for such weapons,
d) the vehicle,
e) the dates of estimated export and re-import, and
f) the border crossing over which the export or re-import is to take place.

Under Section 73, the Ministry of the Interior or Police of the Czech Republic provides data from the information systems maintained in accordance with this Act in cases prescribed by a separate legal regulation or an international treaty which is binding on the Czech Republic and which has been promulgated in the Collection of International Treaties. At present, the Czech Republic provides information in accordance with the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals of 28 June 1978.

Under Section 73(4), the Police Presidium of the Czech Republic forwards the necessary information at its disposal:

a) concerning the transportation of weapons or ammunition to a Member State of the European Union on whose territory or over whose territory these weapons or ammunition are to be transported;
b) concerning the transportation of weapons or ammunition by natural persons or legal persons who are not resident or domiciled in the Czech Republic; information is supplied, no later than during transportation, on the issue of a permit to acquire or possess a Category B

weapon to the relevant Member State of the European Union, if the person to whom the permit has been issued is resident in this Member State, and

c) concerning the acquisition of a Category C weapon to the relevant Member State of the European Union, if the person to whom the permit has been issued is resident in this Member State.

This provision will enter into effect on the date of the Czech Republic's accession to the EU.

Issues related to other hazardous substances

In the field of checks on the non-proliferation of nuclear weapons, the inspection activities are carried out thoroughly in accordance with provisions under Act No 18/1997, on the peaceful use of nuclear energy and ionizing radiation (the Atomic Act), in the wording of Act No 13/2002, and under Regulation No 145/1997, on records and inspections of nuclear material and on a detailed specification thereof in the wording of Regulation No 316/2002, and under Regulation No 178/2002, appointing a list of selected items and dual-purpose items in the nuclear sector.

The ratification process for the Additional Protocol to the Agreement between the Czech Republic and the International Atomic Energy Agency, on the application of guarantees under the Treaty on the Non-Proliferation of Nuclear Weapons (Parliamentary Press No 1245), has been completed.

In the field of inspecting the non-proliferation of bacteriological (biological) and toxin weapons, inspection activities are carried out thoroughly in accordance with Act No 281/2002, on certain measures connected with the prohibition of bacteriological (biological) and toxin weapons and on an amendment to the Trade Licensing Act (the Act was adopted on 30 May 2002 and entered into effect on the date of promulgation thereof).

In the scope of inspections of the non-proliferation of chemical weapons, the inspection activities of the State Office for Nuclear Safety have been consolidated in accordance with Act No 21/1997, on the inspection of the export and import of goods and technology which are subject to international control regimes.

In May 2002, Act No 21/1997, on the inspection of the export and import of goods and technology which are subject to international control regimes, was amended by Act No 204/2002. This Act entered into effect on 24 May 2002. On 28 June 2002, Act No 281/2002, on certain measures connected with the prohibition of bacteriological (biological) and toxin weapons and on an amendment to the Trade Licensing Act, entered into effect. In the framework of the Ministry of Foreign Affairs, further steps are being considered, including the reinforcement of the department's responsibility in relation to international control regimes focusing on the non-proliferation of weapons of mass destruction or in the field of greater penalties for (i.e. including the criminalization of) breaches of legislation connected with these inspection regimes.

From the aspect of international activities, the Czech Republic supported, and in the scope if current legislation applies, the decisions of the plenary sessions of individual international control regimes for the reinforcement of measures against international terrorism (the Australia Group, the Nuclear Suppliers Group, the Zangger Committee, the Missile Technology Control Regime, the Wassengaar Arrangement). Based on a Resolution of the Government of the Czech Republic of 18 November 2002, the Czech Republic acceded to the International Codex on the Non-Proliferation of Ballistic Missiles, which was adopted by the conference at the Hague on 25 November 2002. The implementation of this Codex has not required any legislative changes in the Czech Republic.

Based on provisions in the text of the Convention of the UN Economic Commission on the Transboundary Effects of Industrial Accidents and Act No 353/1999, on the prevention of serious accidents caused by selected hazardous chemical substances and chemical products, information has been gathered on the amount of hazardous substances and technical documentation for the prevention of the occurrence of serious industrial accidents in undertakings. In accordance with the conclusions of the Central Emergency Team meeting held on 23 November 2001, restrictions were placed on the publication of gathered information which could be exploited for terrorism-related activity (The Central Emergency Team decided to classify this information as 'special circumstances' in accordance with Act No 240/2000, the Crisis Act, until an amendment could be made to Act No 353/1999). The list of information on types and amounts of hazardous substances in specific undertakings was removed from the Internet.

Ministry of the Environment Regulation No 383/2001, on the details of waste management, which elaborates on Act No 185/2000, on waste and on an amendment to certain related Acts, entered into effect on 1 January 2002.

At the end of 2002, an amendment to Act No 353/1999, anticipating a restriction in the publication of information about the quantity and placement of hazardous substances in buildings and facilities, was presented to the Czech government. It is also expected that the physical guarding of undertakings and facilities where the most hazardous substances are located (i.e. substances classified in groups A and B) will be introduced.

The Weapons, Explosives, and Fissile Materials Unit of the Unit for the Detention of Organized Crime of the Service of Criminal Service and Investigation cooperates closely in this sphere with representatives of the State Office for Nuclear Safety:

- in the legislative sphere, the Unit for the Detention of Organized Crime of the Service of Criminal Service and Investigation makes comments and suggestions regarding individual normative regulations;
- members of staff from the State Office for Nuclear Safety train members of staff of the Unit for the Detention of Organized Crime of the Service of Criminal Service and Investigation;
- in specific cases where hazardous or fissile materials are seized, there is direct cooperation in ascertaining and subsequently storing or destroying these substances;
- in the second half of 2002, negotiations were launched between the Organized Crime Department and the State Office for Nuclear Safety on the share of both entities in the work

of mobile monitoring groups for rapid responses intended to neutralize any hazardous substances discovered.

The intelligence services contribute to the security of relevant information on the observance of international control regimes in accordance with their legal competence and in accordance with a decision of the Council for Intelligence Activities of 21 April 1999. In the fulfilment of these tasks, the intelligence services work on an ongoing basis with other institutions of state administration, especially the Ministry of Industry and Trade, Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Defence, and State Office for Nuclear Safety. Close cooperation relates in particular to the mutual exchange of information.

1.21. With regard to the implementation of paragraph 2(g), can the Czech Republic disclose which of its institutions is responsible for the enforcement of laws regulating the production, sale, acquisition, storage, import, export, and transit of weapons, ammunition, and explosives? Could the Czech Republic kindly characterize its mechanisms and processes for the application of prohibitions stipulated in laws in connection with the control of exports of goods and transfers of technology? Could the institutions of the Czech Republic provide similar information about the technical assistance provided in connection with trading in controlled goods, especially as regards preventing terrorists from having access to weapons or hazardous materials? CTC would welcome statistics about the use of legal regulations in the prevention of terrorists' access to weapons.

The Ministry of Industry and Trade, Czech Trade Inspectorate, and, in the broader context of other risky activities regulated in connection with the prohibition of chemical and bacteriological weapons, the State Office for Nuclear Safety are responsible for the enforcement of laws regulating the production, sale, acquisition, storage, import, export, and transit of weapons, ammunition, and explosives.

Explosives and plastic explosives

In accordance with Section 24(2) of Act No 61/1988, on mining activities, explosives, and on the State Mining Authority, as amended, **plastic explosives must contain detectable substances** so that they can be detected and identified. Regulation No 327/1992 lays down the requirements to safeguard safety and health at work and safety of operations during the manufacture and processing of explosives, and the professional eligibility of workers for this activity, and Regulation No 340/2001 establishes the requirement of the presence of detectable substances in explosives, including a list of such detectable substances. With other explosives intended for civil use, marking for the purposes of detection is neither carried out nor required.

In accordance with Section 23(1) of the above-mentioned Act, only an organization which has received permission from the Ministry of Industry and Trade of the Czech Republic may manufacture and process explosives or carry out research, development, or experimental production. Under Section 25(1) of the same Act, explosives may only be acquired pursuant to permission from a body of the

State Mining Authority. On the date of the Czech Republic's accession to the EU, it will be possible to transfer explosives abroad or from abroad, or to transit explosives in accordance with a permit from the Czech Mining Authority under Section 25(3) of the above-mentioned Act. At present, the import and export of explosives in the Czech Republic is only possible based on licences granted by the Ministry of Industry and Trade of the Czech Republic.

Firearms and ammunition

With regard to the manufacture, import, or other placement on the market of small arms and light weapons (SALW) which are not intended for the Army of the Czech Republic, there is an obligation to mark or arrange for the marking of each SALW with the year of production, the manufacturer or the country of origin, and the production number. On fulfilment of this obligation, the Czech Authority for the Testing of Weapons and Ammunition labels the SALW with the relevant test mark.

SALW which are not marked or have insufficient marking must not be placed on the market or possessed.

The relevant legislation here is Act No 156/2000, on the validation of firearms, ammunition, and pyrotechnical items, in the wording of Act No 227/2003 and Act No 119/2002, on firearms and ammunition.

Weapons and ammunition which are not marked or have insufficient marking must not be placed on the market or possessed.

Foreign trade in military materials

Foreign trade in military material is regulated by Act No 38/1994, in the wording of Act No 310/2002 ('Act').

The central body of state administration responsible for the implementation of a control regime for foreign trade in military material is the Ministry of Industry and Trade of the Czech Republic, which, in accordance with Act No 2/1969, as amended, set up the Licensing Authority for this purpose.

The Czech control regime is a two-tier system. In order to implement a business transaction, the Czech entity must hold a permit for foreign trade in military material, based on which this entity can carry out marketing and enter into negotiations with foreign partners and seek a licence for the implementation of a specific business transaction.

The Licensing Authority issues licences for five years. A licence applicant may only be an undertaking carrying on business activities with state assets or a commercial company (usually a limited liability company or a public limited company). Permits are not issued automatically, nor is there any legal title to them. The applicant must fulfil all the conditions specified in the law which relate to the origin of registered capital, the personnel in the statutory body (plus further conditions related to the members of the statutory body), the professional and financial safeguarding of the

required scope of trade, etc. In the scope of administrative proceedings, the Licensing Authority requests opinions from the Ministry of Foreign Affairs (foreign-police aspects), the Ministry of Defence (the issue of defensibility), and the Ministry of the Interior (internal security).

A permit holder is entitled to conclude contracts in the scope specified in the permit.

On conclusion of a contract with a foreign partner, the permit holder requests the Licensing Authority to grant a licence which will enable the permit holder to implement the business transaction if the result of proceedings is positive. The Licensing Authority assesses each case independently, placing an emphasis on the credibility of the foreign contractual partner, especially in relation to the declared use of the goods, and assesses other aspects of the transaction from the aspect of the control regime. The opinion of the Ministry of Foreign Affairs, which is required for each application from the aspect of possible foreign-policy impacts, is also taken into account. In set cases, e.g. where significant military material is involved, the opinion of the Ministry of Defence is one of the documents required in the application.

For assessments of a transaction, the weapons embargoes of the UN Security Council, the EU, and the OSCE are a guiding principle. The rules laid down in the EU Code of Conduct on Arms Sales are taken into account.

Brokering is included in trade in military materials in accordance with Act No 38/1994 and is subject to the approval process under this Act.

Export and Import in firearms, ammunition, and explosives for civil use

These goods may be exported or imported only **once a security licence has been granted** in accordance with Act No 62/2000, on certain measures in the export or import of products and on licensing proceedings, and the associated implementing regulation (Government Regulation No 185/2000), which sets the current scope of commodities.

For the purposes of the above-mentioned Act, a 'security licence' is a licence permitting the export or import of products, the possession and handling of which is restricted by separate regulations in the Czech Republic with respect for the security or other important interests of the state.

In an application for a security licence, the applicant also supplies information about third countries through which the transit of goods is to take place, information about the foreign contractual partner, the final user, and selected information about the transaction. The Ministry may make the issue of a security licence contingent on the supply of other information or documents by the applicant which are required to assess the application; these requirements must be respected by the applicant within a set time limit.

1.22. CTC is aware that the Czech Republic has already discussed certain issues covered in the preceding paragraphs in its reports and questionnaires for other organizations which monitor the observance of international standards. CTC will accept copies of such reports or questionnaires, together with details about efforts to apply international Best Practice, codes, and standards concerning the implementation of Resolution 1373, as the Czech Republic's reply to these questions.

As is mentioned above (section 1), on 26 May – 6 June 2003, an evaluation was conducted in the Czech Republic by a mission of experts from the International Monetary Fund and World Bank, focusing on the fight against money laundering and the financing of terrorism. See Appendix No 1 for the Mission's report.